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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 74-920

DAN D. WEINER
Petitioner,

v

DAYTON BAR ASSOCIATION
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

DAN D. WEINER
4848 Marshall Road
Kettering, Ohio 45429
Attorney for Petitioner

Kettering Printing Service, 2921 Rushland Dr., Kettering, Ohio 45419

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

The petitioner, Dan D. Weiner, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Ohio Supreme Court.

OPINIONS BELOW

The opinion below is reported at 40 Ohio State 2d 7. It is appended hereto as Appendix A.

JURISDICTION

The judgment of the court below (Appendix B-1, **infra** P. A-10) was entered on October 16th, 1974. A timely petition for rehearing was denied on November 1, 1974 (Appendix B-2, **infra** P. A-12) and a second timely petition for rehearing and to reopen the matter for presentment of newly discovered evidence was denied on November 29th, 1974. (Appendix B-3, **infra** P. A-13.) The jurisdiction of this court is invoked under the provision of 28 U.S.C. Sec. 1257 (3).

QUESTIONS PRESENTED

Petitioner, who was admitted to the practice of law in the State of Ohio in 1963, was found guilty of violation of four provisions of the Code of Professional Responsibility and was suspended by the Ohio Supreme Court for an indefinite period from the practice of law in the State of Ohio. The questions presented are:

1. Whether a state may, consistent with due process of law required by the Fourteenth Amendment of the United States Constitution, suspend an attorney from the practice of law when he has been denied fair notice of the charges made against him?

2. Is an attorney denied due process of law in a disbarment proceeding when the Supreme Court of Ohio holds him to be guilty of a violation of a canon of ethics with which he was not originally charged?

3. Is an attorney denied due process of law in a disbarment proceeding when the Supreme Court of Ohio holds him to be guilty of a violation of a canon of ethics with which the investigating panel ruled not to be in issue and in accordance with said ruling no evidence was submitted by petitioner on that charge?

4. Whether a state may, consistent with the equal protection of contract law to which all citizens are entitled under the Fourteenth Amendment of the United States Constitution, suspend an attorney from the practice of law for failure to file a final decree of divorce where the attor-

ney has a contractural agreement with the client that the final decree was not to be filed until his fees were paid in full and the client breaches the contract by not making payments?

5. Is an attorney denied due process of law in a disbarment proceeding when the Ohio Supreme Court finds him guilty of a violation of a canon of ethics pertaining to a client who neither appears nor testifies in the proceedings, thereby denying him of his right to confront and cross-examine the witnesses and accusers against him?

FEDERAL CONSTITUTIONAL PROVISIONS AND CANONS OF PROFESSIONAL RESPONSIBILITY INVOLVED

The Fourteenth Amendment to the Constitution of the United States reads in part:

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce anv law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Canons of Professional Responsibility involved are:

- Canon DR 2-106 Fees for Legal Services.
- Canon DR 2-110 Withdrawal from Employment.
- Canon DR 9-102 Preserving Identity of Funds and Property of a Client.

These Canons are set forth in their entirety in Appendix C-3, infra P. A-17.

STATEMENT OF FACTS

Petitioner is an attorney admitted to the Bar of Ohio in 1963. He was tried before a panel of three members of the state disciplinary committee. A report was then issued to the Ohio Supreme Court by the entire committee and the Ohio Supreme Court found the petitioner guilty of certain offenses and suspended him from the practice of law in the State of Ohio for an indefinite period of time.

Petitioner filed a motion for rehearing, which was denied. A second motion for a rehearing coupled with one to reopen the matter to enable him to present newly discovered evidence was also denied.

Petitioner was charged by the Dayton Bar Association with violation of 6 Canons of Professional Ethics. (See Appendix C-1, **infra** P. A-14) To these charges petitioner submitted interrogatories to be answered by the Dayton Bar Association. (See Appendix C-2, **infra** P. A-15)

These interrogatories were never answered by the Dayton Bar Association, nor are there any procedural sanctions whereby petitioner could require that the interrogatories be answered.

The Ohio Supreme Court found petitioner guilty of DR 9-102 (B) (3) although he was never charged by the local bar association with a violation of that canon.

The Ohio Supreme Court also ruled that petitioner withdrew from representation of a client named Garrett in violation of Canon DR 2-110 (A) (2) and that he was guilty of charging Mr. Garrett excessive fees in violation of DR 2-106. Mr. Garrett never made a complaint against petitioner nor did he testify or even appear against petitioner during the disciplinary hearing. Furthermore during the disciplinary hearing the panel members stated that the question of the amount of the fees was not in issue before them.

The Ohio Supreme Court also ruled that petitioner had withdrawn from representation of a client named Ison in violation of Canon DR 2-110 (A) (2). Mrs. Ison likewise had never filed a complaint against petitioner with the

local bar association. The Ison case involved a divorce matter. Petitioner proceeded forward with a final hearing on the divorce with the understanding and agreement with the client that the decree would not be filed until petitioner's fees were paid in full. After the hearing Mrs. Ison made no additional payments. The court dismissed the matter and petitioner notified Mrs. Ison by letter of the dismissal, asking her to contact him if she wanted to salvage the matter. Hearing no response from Mrs. Ison, petitioner assumed that she and her husband had reconciled. Meanwhile Mrs. Ison contacted another attorney who filed her final decree of divorce.

The constitutional issues presented herein were raised by petitioner in his motion for rehearing after the Supreme Court made its findings of fact and decision. Because of the nature of the proceedings, these issues did not arise until after that decision was rendered.

REASONS FOR GRANTING THE WRIT

This case is of importance to every practicing attorney in the United States.

The vast majority of disciplinary cases involve a clear cut violation i.e. commission of a crime involving moral turpitude. The recent wave of national prominence attached to the attorneys participating in the Watergate scandals has created additional emphasis making disciplinary action a matter of great public concern.

The United States Supreme Court has set up certain guidelines in the following cases: **Schware v Board of Bar Examiners,** 353 U.S. 232, **Spevack v Klein,** 385 U.S. 511 and **In re Ruffalo,** 390 U.S. 544.

This case involves an area where these guidelines have not yet reached and will assist in the establishment of further guidelines firming up the canons of ethics and adding uniformity in their regulation, interpretation and enforcement. This case reaches beyond into an area that needs additional clarification by the United States Supreme Court as to the constitutionality of the disciplinary proceedings for the entire bar of all states.

From the beginning to the end of his case, petitioner has been denied procedural and substantive due process.

1. Upon receipt of the complaint setting forth six counts of violations, petitioner filed interrogatories requesting that he be advised in detail of the charges against him (Appendix C-2, **infra** P. A-15). The Dayton Bar Association refused to answer them. Furthermore the Ohio procedure fails to provide any method to enforce or require that interrogatories be answered.

The Ohio Supreme Court found petitioner guilty of Canon 9-102 (B) (3), "Failure to maintain complete records of all funds . . . coming into the possession of a lawyer and render appropriate accounts to his client regarding them." However, petitioner was never charged with a violation of that section of the canon and was therefore never given an opportunity to present evidence to rebut that particular finding.

The Ohio Supreme Court found petitioner guilty of charging Mr. Garrett excessive fees in violation of DR 2-106. During the disciplinary hearing one panel member stated, "The question of the amount of the fee isn't involved." Another panel member stated "I don't think it is the question of the amount of the time or the difficulty of the case or the amount of the fee . . . I don't think we are concerned with the merits of the case against Mr. Garrett. I don't think we are concerned with that or the amount of the fee." Petitioner presented no testimony on that issue.

Each of the above demonstrates a clear violation of the principles and guidelines established by the United States Supreme Court in **In re Ruffalo,** supra.

> "Disbarment, designed to protect the public, is a punishment or penalty imposed on the lawyer. **Ex parte Garland,** 4 Wall. 333, 380; **Spevack v Klein,** 385 U.S. 511, 515. He is accordingly entitled to procedural due process, which includes fair notice of the charge. See **In re Oliver,** 333 U.S. 257, 273. It was said in **Randall v Brigham,** 7 Wall. 523, 540, that when proceedings for disbarment are 'not taken for matters occurring in open court, in the

presence of the judges, notice should be given to the attorney of the charges made and opportunity afforded him for explanation and defense.' " **In re Ruffalo,** supra, 550.

The United States Supreme Court, also in establishing due process notice requirements, stated in **In re Gault,** 387 U.S. 1 at P. 33:

"Notice, to comply with due process requirements, must be sufficiently in advance of scheduled court proceedings so that reasonable opportunity to prepare will be afforded, and it must 'set forth the alleged misconduct with particularity.' "

A state cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the due process clause of the Fourteenth Amendment. **Schware v Board of Bar Examiners of New Mexico,** supra, P. 238.

The absence of fair notice as to the reach of the disciplinary hearing, failure of the local bar association to advise as to the precise nature of the charges, finding petitioner guilty of a canon with which he was not charged and of another canon which the panel members ruled not in issue clearly deprived petitioner of procedural due process.

2. The Ohio Supreme Court found petitioner guilty of violating two separate canons of ethics pertaining to his representation of client Garrett. Garrett never appeared nor testified before the disciplinary panel therefore petitioner was denied an opportunity to cross-examine Mr. Garrett on these particular charges. Furthermore, Mr. Garrett never filed or registered a complaint against the petitioner.

The United States Supreme Court in **Pointer v Texas,** 380 U.S. 400 at P. 405 stated:

"There are few subjects, perhaps, upon which this Court and other courts have been more nearly unanimous than in their expressions of belief that the right of confrontation and cross-

> examination is an essential and fundamental requirement for the kind of fair trial which is this country's constitutional goal. Indeed, we have expressly declared that to deprive an accused of the right to cross-examine the witnesses against him is a denial of the Fourteenth Amendment's guarantee of due process of law." **In re Oliver**, 333 U.S. 257, **Douglas v Alabama**, 380 U.S. 415.

The United States Supreme Court has already determined that disbarment proceedings are adversary proceedings of a quasi-criminal nature. **In re Ruffalo, supra**, 551. Therefore, the standards of **Pointer v Texas, supra** are applicable in petitioner's case.

3. The Ohio Supreme Court found that petitioner's failure to file a final decree of divorce constituted a violation of the canon of ethics, regardless of the fact that the client had contractually agreed that the final decree would not be filed until payment of the fees was made and regardless of the fact that the client breached the contract by not making any additional payments whatsoever.

The facts involved are simple. Petitioner agreed to go forward with a final hearing of divorce with the understanding that full payment would be made by the client before the decree would be filed. Client made no payments after the hearing.

The issues involved are just as simple. Are attorneys second-rate citizens? Are attorneys to be denied their contractual rights?

The Ohio Supreme Court itself has set up the principles that should be applicable in this case but which were denied to petitioner.

> "Contracts and compacts have been entered into between men, tribes and nations during all time from the earliest dawn of history, and the right and liberty of contract is one of the inalienable rights of man, fully secured and protected by our constitution." **Palmer & Crawford v Tingle**, 55 O.S. 423, 441.

> The right to contract freely with the expectation that the contract shall endure according to its terms is as fundamental to our society as the right to write and to speak without restraint. **Blount v Smith,** 41 O.O. 2d 250, 253.

As the right of private contract is no small part of the liberty of the citizen, the usual and most important function of the courts of justice is rather to maintain and enforce contracts than to enable parties thereto to escape from their obligation on the pretext of public policy, unless it clearly appears that they contravene public right or the public welfare. **Baltimore & O.S.W.R. Co. v Voigt,** 176 U.S. 498.

Justice Douglas speaking for the United States Supreme Court in **Spevack v Klein,** supra, has already established that lawyers also enjoy first-class citizenship.

The ruling of the Ohio Supreme Court clearly denied petitioner and all other attorneys their right of enforcing contracts with clients, in fact forcing petitioner and his fellow lawyers to engage in a condition of involuntary servitude, all in violation of the equal protection clause of the Fourteenth Amendment of the United States Constitution.

CONCLUSION

For the reasons set forth above and in view of the fact that the canons of ethics have been adopted by the majority of States in their present form, there is a need to extend the guidelines already established by the Court into the area involved in this case and a writ of certiorari should issue to review the judgment and opinion of the Ohio Supreme Court.

Respectfully submitted

DAN D. WEINER
4848 Marshall Road
Kettering, Ohio
Attorney for Petitioner

APPENDIX

APPENDIX A

DAYTON BAR ASSOCIATION *v.* WEINER.

40 Ohio St. 2d 7.]

Attorneys at law — Misconduct — Acts warranting indefinite suspension.

(No. D.D. 74-6—Decided October 16, 1974.)

ON CERTIFIED REPORT by the Board of Commissioners on Grievances and Discipline.

Respondent, Dan D. Weiner, was admitted to the practice of law in Ohio in 1963, and has, since then, engaged in such practice in the city of Dayton.

This disciplinary matter came before the Board of Commissioners on Grievances and Discipline upon the complaint and certificate of the Dayton Bar Association, alleging certain violations by respondent of the Code of Professional Responsibility.

The complaint enumerates respondent's alleged willful breach of six specific portions[1] of the Code: Canon 1, EC 1-5[2]; Cannon 1, DR 1-102 (A) (5)[3]; Canon 2, DR

[1] The disciplinary rules and ethical considerations contained in the Code of Professional Responsibility are commonly denoted DR and EC, respectively.

[2] EC 1-5 reads:

"A lawyer should maintain high standards of professional conduct and should encourage fellow lawyers to do likewise. He should be temperate and dignified, and he should refrain from all illegal and morally reprehensible conduct. Because of his position in society, even minor violations of law by a lawyer may tend to lessen public confidence in the legal profession. Obedience to law exemplifies respect for law. To lawyers especially, respect for the law should be more than a platitude."

[3] DR 1-102(A) (5) reads:

"MISCONDUCT.

"(A) A lawyer shall not:

"* * *

"(5) Engage in conduct that is prejudicial to the administration of justice."

2-106 (A)[4]; Canon 2, DR 2-110 (A) (2)[5]; Canon 7, DR 7-106 (C) (6)[6]; and Canon 9, DR 9-102[7].

[4]DR 2-106 (A) reads:

"FEES FOR LEGAL SERVICES.

"(A) A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee."

[5]DR 2-110 (A) (2) reads:

"WITHDRAWAL FROM EMPLOYMENT.

"(A) In general.

"* * *

"(2) In any event, a lawyer shall not withdraw from employment until he has taken reasonable steps to avoid foreseeable prejudice to the rights of his client, including giving due notice to his client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules."

[6]DR 7-106 (C) (6) reads:

"TRIAL CONDUCT.

"* * *

"(C) In appearing in his professional capacity before a tribunal, a lawyer shall not:

"* * *

"(6) Engage in undignified or discourteous conduct which is degrading to a tribunal."

[7]DR 9-102 reads:

"PRESERVING IDENTITY OF FUNDS AND PROPERTY OF A CLIENT.

"(A) All funds of clients paid to a lawyer or law firm, other than advances for costs and expenses, shall be deposited in one or more identifiable bank accounts maintained in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:

"(1) Funds reasonably sufficient to pay bank charges may be deposited therein.

"(2) Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

"(B) A lawyer shall:

"(1) Promptly notify a client of the receipt of his funds, securities, or other properties.

I

The charges for violating Canon 1, EC 1-5 and DR 1-102 (A) (5) relate to respondent's alleged misconduct before Neal F. Zimmers, Jr., Judge of the Montgomery County Court and Harold H. Galbraith, Judge of the Vandalia Municipal Court. Respondent was found guilty of contempt of court in a matter before Judge Zimmers, and the facts surrounding that occurrence are found in *State* v. *Weiner* (1974), 37 Ohio St. 2d 11, in which case this court affirmed the contempt citation.

The incident before Judge Galbraith may be summarized as follows: In the course of his closing argument as defense counsel in a criminal trial, respondent said, "I want you to listen to the court's instructions and don't be trapped by the court's instructions." Judge Galbraith immediately ordered counsel into chambers and admonished respondent. Upon returning to the courtroom, respondent said to the jury, "I apologize for whatever I said" and "don't let the judge's instructions confuse you on aiding and abetting." At this juncture, the court declared a mistrial, and cited respondent for contempt. Later, however, Judge Galbraith withdrew the contempt charge. The board concluded that the evidence was insufficient to sustain a willful breach of Canon 1, EC 1-5 and DR 1-102.

II

The charges for violating Canon 2, DR 2-106 (A) relate to respondent allegedly charging or collecting illegal or clearly excessive fees from five of his clients: Harry E. Garrett, Jr., Maggie Williams, Richard A. Parr, Fred M. Miller and Shirley Ison.

The facts of the Garrett case are found in *State* v. *Weiner, supra,* and the board found a violation of DR 2-106 (A).

"(2) Identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable.

"(3) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them.

"(4) Promptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive."

The basis for the charge of respondent's breach of DR 2-106 (A) in the Maggie Williams matter is that respondent charged an excessive fee for representing her in a shoplifting prosecution and for making a settlement with a house-siding contractor. The board found however that the evidence was insufficient to sustain the count and recommended that it be dismissed.

Richard A. Parr was represented by respondent in a trespassing prosecution, which ended in a jury verdict of acquittal. Parr testified that he was unable to pay a requested $100 retainer, that respondent later advised him that the fee would be on an hourly rate of $50 per hour, and that it would run "around $500." After the trial, respondent requested and received $1,500 for his services. The board found that the fee charged was not excessive, and recommended that the count be dismissed.

Fred M. Miller consulted respondent in connection with a contempt proceeding for nonpayment of child support. Miller admitted that respondent had advised him at the outset that the services would be charged at an hourly rate and that an exact bill could not be given, but that it would be $100 to $150. After representing Miller, respondent tendered a statement for $315 for 7 hours and 55 minutes, to which Miller objected. The board found that the evidence was insufficent to sustain the count and recommended that it be dismissed.

Shirley Ison consulted respondent about obtaining a divorce. Respondent allegedly quoted a fee of $300. Respondent filed the necessary papers, later discovering that Mrs. Ison had reconciled with her husband. Subsequently, Mrs. Ison requested that respondent reinstitute the divorce proceedings. Respondent again filed the necessary papers, but experienced unusual complications in making service of process on his client's husband. Fourteen months after commencement of the original filing, Mrs. Ison obtained an uncontested divorce. Respondent submitted a total bill for $1,068 based upon an hourly rate, to which bill Mrs. Ison objected. The board found that the evidence was insufficient to sustain the count and recommended that it be dismissed.

III

The charges for violating Canon 2, DR 2-110 (A) (2), *supra*, relate to respondent allegedly withdrawing from employment without taking reasonable steps to avoid foreseeable prejudice to the rights of three of his clients: Garrett, Maggie Williams, and Shirley Ison.

The facts surrounding respondent's misconduct in connection with Garrett are fully reported in *State* v. *Weiner*, *supra*, and may be summarized as follows: Respondent was having difficulty in collecting the remainder of a retainer fee from Garrett. Garrett informed respondent that he desired to procure other counsel. Respondent did not object, and advised Garrett to be present with his new attorney at the trial. Respondent allegedly informed the prosecutor of his withdrawal from the Garrett case, asked that the information be passed along to the trial judge, and requested a return call if problems developed. On the date of the trial, Garrett appeared at the courthouse without counsel, and respondent failed to appear there or at another trial he had scheduled for that day, allegedly because he was ill and remained at home. The board found that respondent's conduct constituted a breach of DR 2-110 (A) (2), *supra*, but recommended that "if this charge stood alone it would merit a reprimand, probably a public reprimand."

Respondent's misconduct toward Maggie Williams, on this count, is reported by the board as follows:

"Prior to what defendant [Williams] thought was the final hearing defendant had paid $320 and gave respondent a check for $50 which he marked 'account paid in full' but in an ante room prior to the supposed final hearing, respondent informed defendant that he had billed her $50 an hour for everything and pulled out a $540 note for defendant to sign; that if defendant didn't sign he would merely leave it up to the judge. I will walk out and mark it off as a bad cause; that defendant could spend as much as 90 days in jail plus a $500 fine. After some remonstrance defendant's husband signed the $540 note and respondent required addition of words 'on siding' to words 'account

paid in full' to last $50 check. Respondent then went into court and pleaded defendant guilty of lesser offense of trespassing, was assessed a fine of $100, which was paid out of her cash appearance bond.

"Defendant was of the opinion she was to be tried by court without a jury but respondent testified he had prearranged with the prosecutor to accept the plea to a lesser offense of trespassing."

Upon these facts the board concluded:

"The threat of withdrawal from employment under the circumstances here indicated is a breach of Canon 2, Disciplinary Rule 2-110 and would certainly merit a public reprimand if standing alone."

Respondent's alleged misconduct toward Shirley Ison may be summarized as follows: On August 9, 1971, Mrs. Ison obtained an oral decree of divorce from the bench. Several months later, respondent advised Mrs. Ison that she was not divorced because the $488 fee balance had not been paid, and that her case would be dismissed unless a judgment entry were filed. The judge inquired of respondent why the judgment had not been filed. Respondent responded that "he wasn't going to put it [the decree] on" as Ison had paid him but $600 on a fee of over $1,000. Whereupon, another attorney put the decree on at the judge's request.

Upon these facts the board concluded:

"* * * Refusal to proceed to hearing until fees are secured or paid is one thing; refusal to put on the entry after the hearing, which refusal has the effect of working a dismissal, is an entirely different matter," and constituted a willful breach of Canon 2, DR 2-110, *supra*.

IV

The charges relating to respondent's alleged breach of Canon 7, DR 7-106 (C) (6), *supra*, are unspecified in the report of the board, and will therefore be regarded as abandoned.

V

In the final count, respondent is charged with:

"Willful breach of Canon 9, Dr 9-102 in that respondent caused funds of clients to be deposited in bank accounts maintained without the state of Ohio in which were funds belonging to respondent, and in that respondent converted to his own use trust funds belonging to his clients."

The facts concerning the first portion of this count are reported by the board, as follows:

"Prior to 1964 respondent established a checking account in Creve-Couer, Missouri, which account he designated as a trust account and has continued to use this account and this account was still in existence at the time of hearing. Since coming to Dayton he also established two trust savings accounts in Homestead Savings and Loan in Dayton from which and to which he has transferred funds from and to the trust checking account in Missouri. He has established an Ohio trust account in First National Bank, Dayton, in March, 1973. Respondent could not tell how much in the various accounts was his own funds and how much was funds of various clients, merely that he had more funds in these accounts than he owed to clients, and that he had no general or master ledger or account to which he or any employee of his could refer and determine and report the exact amount of clients' funds in each account. He further indicated that interest from the trust savings accounts was paid to him and that he paid income taxes on the same and did not apportion it to the various clients' funds. This commingling of funds has existed for nearly a decade and was not terminated after the filing of the complaint, continuing apparently at the time of the hearing. This situation is in sharp contrast with his detailed bookkeeping, billing and collecting methods in evidence as to attorney fees. His handling of his trust accounts and clients' funds and his persistence in using a foreign trust account or an account designated by him as a trust account in another state constitutes a clear and willful breach of Canon 9 and Disciplinary Rule 9-102 (A) and

(B) (3) and is misconduct as defined in Section (5) (a) of Rule V of the Supreme Court Rules For The Government Of The Bar Of Ohio."

The second portion of the count relates to respondent's alleged mishandling of funds entrusted to him by a client, William H. Turner, which is summarized as follows: Turner consulted respondent in order to obtain custody of his son who resided with his mother in Kentucky. Respondent required Turner to deposit with him $480 "cash in trust for back child support" before he would undertake a custody proceeding. Turner delivered the $480 to respondent, but the custody matter was never filed. Subsequently, respondent advised Turner that, unless arrangements were made to start regular payment of attorney fees, respondent would apply the trust fund to his fees. Respondent eventually applied the trust deposit to his fees without Turner's consent, for which the board found a willful breach of Canon 9, DR 9-102, *supra*.

VI

The recommendation of the board reads as follows:

"In view of the collective and cumulative evidence of misconduct, and an apparent basic indisposition to a proper conduct of the practice of law with the interests of clients subordinated to his own interests in his mind, it is the recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio that respondent, Dan D. Weiner, be suspended for an indefinite period of time from the practice of law as provided in Section (6) (b) of Rule V of the Supreme Court Rules For The Government Of The Bar Of Ohio."

The matter is now before this court for consideration of the report of the board and the objections of respondent.

Mr. Richard G. Snell and *Mr. Fred M. Izenson,* for relator.

Mr. Horace W. Baggott and *Mr. Raymond A. White,* for respondent.

Per Curiam. We have examined the record of the testimony taken at the hearing before the Board of Commissioners on Grievances and Discipline and the exhibits presented by both relator and respondent. After a careful analysis of such evidence as to each count passed upon by the board, this court agrees that the record amply supports the findings of the board that respondent has violated the provisions of Canon 1, DR 1-102 (A) (5); Canon 2, DR 2-106 (A); Canon 2, DR 2-110 (A) (2); and Canon 9, DR 9-102, and that, therefore, respondent is guilty of misconduct as defined in Gov. R. V (5) (b).

We affirm the findings of the board and overrule respondent's objections thereto.

We come now to the recommendation of the board that respondent be suspended for an indefinite period from the practice of law pursuant to Gov. R. V (6) (b). In our review of the whole record, and in consideration of respondent's objections and contentions, we find no facts in mitigation or justification of his actions.

Therefore, the findings and report of the Board of Commissioners on Grievances and Discipline are confirmed, and it is the judgment of this court, pursuant to Gov. R. V (6) (b), that respondent, Dan D. Weiner, be suspended for an indefinite period from the practice of law.

Judgment accordingly.

O'NEILL, C.J., HERBERT, CORRIGAN, STERN, CELEBREEZE, W. BROWN and P. BROWN, JJ., concur.

APPENDIX B-1

The Supreme Court of the State of Ohio
Of the Term of January, 1974.

To-wit: October 16, 1974.

Dayton Bar Association, Relator,
v.
Dan D. Weiner, Respondent.

ON CERTIFIED REPORT BY THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE DD No. 74-6

In appearing to the Court that the Board of Commissioners on Grievances and Discipline filed its Final Report in this Court on June 7, 1974, recommending that the respondent, Dan D. Weiner, be indefinitely suspended from the practice of law, pursuant to Rule V, Section 6b of the Supreme Court Rules for the Government of the Bar of Ohio, and it further appearing that respondent filed objections to the Final Report of the Board of Commissioners on Grievances and Discipline, this cause was argued by counsel. On consideration thereof, it is ordered and adjudged by this Court that the report of the Board be confirmed and respondent suspended from the practice of law for an indefinite period.

The respondent, Dan D. Weiner, is hereby ordered to cease and desist from the practice of law in any form and is forbidden to appear on behalf of another before any court, judge, commission, board, administrative agency or other public authority. It is further ordered that he be forbidden to counsel or advise, or prepare legal instruments for others or in any manner perform services of any kind for others which would constitute the practice of law. He is also forbidden to hold himself out to another or to the public as being authorized to perform legal services, and he is hereby divested of each, any and all of the rights,

privileges and prerogatives customarily accorded to a member in good standing of the legal profession of Ohio.

It is further ordered that the respondent, Dan D. Weiner, surrender his certificate of admission to practice to the Clerk of this Court forthwith and that his name be stricken from the roll of attorneys maintained by this Court.

It is further ordered that the respondent, Dan D. Weiner, pay the costs of these proceedings taxed in the amount of Two Thousand Two Hundred Ninety Seven Dollars and twenty-eight cents ($2,297.28).

It is further ordered that the Clerk of this Court issue certified copies of this entry as provided for in Section 19, Rule V of the Supreme Court Rules for the Government of the Bar of Ohio.

APPROVED:

C. WILLIAM O'NEILL,

Chief Justice

APPENDIX B-2

THE SUPREME COURT OF THE STATE OF OHIO

Dayton Bar Association,
Relator,

vs.

Dan D. Weiner,
Respondent.

1974 TERM
To wit: November 1, 1974
No. DD 74-6
REHEARING

It is ordered by the court that rehearing in this case is denied.

APPENDIX B-3

THE SUPREME COURT OF THE STATE OF OHIO

Dayton Bar Association,
Relator,

vs.

Dan D. Weiner,
Respondent.

1974 TERM
To wit: November 29, 1974
No. DD 74-6
REHEARING

It is ordered by the court that rehearing in this case is denied.

APPENDIX C-1

CHARGES AGAINST PETITIONER

"1. Willful breach of Canon 1, Ethical Consideration 1-5, in that Respondent is guilty of intemperate and undignified conduct in evidencing disrespect for the legal system and for duly acting and qualified judges in the performance of their duties.

"2. Willful breach of Canon 1, Disciplinary Rule 1-102 Misconduct (A)(5) in that Respondent's disrespect for judges as aforesaid and for the legal system as aforesaid constituted conduct that is prejudicial to the administration of justice.

"3. Willful breach of Canon 2, Disciplinary Rule 2-106 Fees for Legal Services (A) in that Respondent entered into agreements for and charged and collected clearly excessive fees for legal services rendered.

"4. Willful breach of Canon 2, Disciplinary Rule 2-110, Withdrawal from employment (A)(2) in that Respondent withdrew from employment without taking reasonable steps to avoid foreseeable prejudice to the rights of his client.

"5. Willful breach of Canon 7, Disciplinary Rule 7-106 (C)(6) in that Respondent engaged in undignified and discourteous conduct which was degrading to a tribunal.

"6. Willful breach of Canon 9, Disciplinary Rule 9-102 in that Respondent caused funds of clients to be deposited in bank accounts maintained without the State of Ohio in which were funds belonging to Respondent and in that Respondent converted to his own use trust funds belonging to his clients."

APPENDIX C-2

INTERROGATORIES

Come now Respondent and requests Relator to answer the following Interrogatories, in writing and under oath, within 28 days of the date of service.

1. State with particularity each time and place in which you claim the respondent was guilty of intemperate and undignified conduct in evidencing disrespect for the legal system, and state the exact fact or facts upon which you rely, to support said charge.

2. State the exact time and the identity of the acting and qualified Judges to whom you claim the Respondent was intemperate and undignified and disrespectful and state with particularity the act or acts which you claim support this charge.

3. In charge #2 you claim willful breach of Canon 1, Disciplinary Rule 1-102 Misconduct (A)(5) by the Respondent under circumstances that he engaged in conduct that is prejudicial to the administration of justice. State exactly and in what manner you claim the Respondent violated this provision of Canon 1, and the act or acts that you claim he did which violated this Canon.

4. State with particularity the agreements that you claim the Respondent entered into in which he charged or collected "clearly excessive fees for legal services rendered," and state the amount which you claim was the correct fee for the services rendered and the facts upon which you base this claim.

5. In answering the preceding interrogatory, state exactly and in detail what investigation, research, or interviews of individuals you have made to establish this charge, and give the names and addresses of each person interviewed.

6. State exactly the facts upon which you base Charge #4 that the Respondent withdrew from employment without taking reasonable steps to avoid foreseeable prejudice to the rights of his client, and give the name of each client whom you claim was affected by such withdrawal.

7. State when and where you claim the Respondent breached Canon Rule 7-106 (C) (6), and state in detail the undignified and discourteous conduct which you claim the Respondent was guilty of, and in what manner you claim the same discredited the tribunal, and further state the name of the tribunal or tribunals before whom this Respondent so behaved.

8. Do you claim in Charge #6 that this Respondent converted money of his clients to his own use?

9. If your answer to the above interrogatory is in the affirmative, state the names of the clients and the amount of money which you claim was converted.

10. Further, in amplification of Charge #6, state whether you claim a deposit in trust funds in a bank out of the State of Ohio had some improper or ulterior motive.

11. If your answer to Interrogatory #10 is in the affirmative, state the evidence upon which you rely to establish this fact.

PROOF OF SERVICE

I hereby certify that a copy of the foregoing Interrogatories has been served upon Richard G. Snell, Counsel for Relator, at 2260 Winters Bank Building, Dayton, Ohio 45402, by mailing same to him by regular U.S. Mail, postage prepaid, this 5 day of June, 1973.

DAN D. WEINER
Attorney for Respondent

APPENDIX C-3
CANONS - INVOLVED

DR 2-106 Fees for Legal Services.
(A) A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee.

DR 2-110 Withdrawal from Employment.
(A) In general.

(1) If permission for withdrawal from employment is required by the rules of a tribunal, a lawyer shall not withdraw from employment in a proceeding before that tribunal without its permission.

(2) In any event, a lawyer shall not withdraw from employment until he has taken reasonable steps to avoid foreseeable prejudice to the rights of his client, including giving due notice to his client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules.

(3) A lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned.

(B) Mandatory withdrawal.

A lawyer representing a client before a tribunal, with its permission if required by its rules, shall withdraw from employment, and a lawyer representing a client in other matters shall withdraw from employment, if:

(1) He knows or it is obvious that his client is bringing the legal action, conducting the defense, or asserting a position in the litigation, or is otherwise having steps taken for him, merely for the purpose of harassing or maliciously injuring any person.

(2) He knows or it is obvious that his continued employment will result in violation of a Disciplinary Rule.[145]

(3) His mental or physical condition renders it unreasonably difficult for him to carry out the employment effectively.

(4) He is discharged by his client.

(C) Permissive withdrawal.

If DR 2-110 (B) is not applicable, a lawyer may not request permission to withdraw in matters pending before a tribunal, and may not withdraw in other matters, unless such request or such withdrawal is because:

(1) His client:

(a) Insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law.

(b) Personally seeks to pursue an illegal course of conduct.

(c) Insists that the lawyer pursue a course of conduct that is illegal or that is prohibited under the Disciplinary Rules.

(d) By other conduct renders it unreasonably difficult for the lawyer to carry out his employment effectively.

(e) Insists, in a matter not pending before a tribunal, that the lawyer engage in conduct that is contrary to the judgment and advice of the lawyer but not prohibited under the Disciplinary Rules.

(f) Deliberately disregards an agreement or obligation to the lawyer as to expenses or fees.

(2) His continued employment is likely to result in a violation of a Disciplinary Rule.

(3) His inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal.

(4) His mental or physical condition renders it difficult for him to carry out the employment effectively.

(5) His client knowingly and freely assents to termination of his employment.

(6) He believes in good faith, in a proceeding pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal.

DR 9-102 Preserving Identity of Funds and Property of a Client.

(A) All funds of clients paid to a lawyer or law firm, other than advances for costs and expenses, shall be deposited in one or more identifiable bank accounts maintained in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:

(1) Funds reasonably sufficient to pay bank charges may be deposited therein.

(2) Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

(B) A lawyer shall:

(1) Promptly notify a client of the receipt of his funds, securities, or other properties.

(2) Identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable.

(3) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them.

(4) Promptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive.

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SUPREME COURT, U. S.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 74-920

DAN D. WEINER
Petitioner,

v

DAYTON BAR ASSOCIATION
Respondent

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

Richard G. Snell
2260 Winters Bank Tower
Dayton, Ohio 45402

and

Fred M. Izenson
1900 Winters Bank Tower
Dayton, Ohio 45402

Attorneys for Respondent

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 74-920

DAN D. WEINER
Petitioner,

v

DAYTON BAR ASSOCIATION
Respondent

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

OPINIONS BELOW

The opinions below consist of the findings of fact and recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio, together with the opinion of the Ohio Supreme Court upholding the recommendation of the Board and are attached as Appendices A-1 and A-2 respectively.

STATEMENT OF FACTS

The Dayton Bar Association has a well-defined procedure for handling complaints made against lawyers practicing in its jurisdictional area. A complainant is generally required to file a written complaint with the Dayton Bar Association before an investigation is made. In a few complaints filed with the Bar Association, written complaints are not required. This generally occurs when the lawyer's activity becomes a matter of public knowledge through a newspaper article or as the result of television or radio news coverage.

After a written complaint is made to the Bar Association, a copy is immediately forwarded to the lawyer against whom the complaint has been made. If the matter is deemed worthy of investigation, a member of the Dayton Bar Association Ethics Committee is assigned to investigate the complaint, gets in touch with the complainant, and also discusses the matter with the lawyer involved. A report is then made by the member to the full Ethics Committee which then decides whether to dismiss the case or take further action. Members of the Ethics Committee are attorneys who are members of the Dayton Bar Association and who have asked to serve on the Committee.

If the full Ethics Committee then decides that further action should be taken it proceeds under the rules of the Supreme Court of Ohio (as was done here) which procedure will be discussed in detail later.

The procedures just mentioned were followed in the case of Petitioner. Although not required to do so, the Ethics Committee, after determining that further action against the Petitioner might be required, invited the Petitioner to appear before the Ethics Committee to discuss the complaints against him. The Petitioner appeared voluntarily before the Committee and an informal discussion was held with the Petitioner being given the opportunity to present his side of the case.

After the informal discussion, a vote is taken by the Ethics Committee to determine whether or not there is reasonable cause to carry the matter further, and if the Committee so determines, the matter is referred to the Executive Committee of the Dayton Bar Association which consists of some six Dayton Bar Association members who constitute the officers

of the Bar Association. The Executive Committee's duty is to consider the matter further and then either dismiss it or determine to pursue the procedure established by the Ohio Supreme Court for discipline of members of the Ohio Bar. Many complaints are dropped at this point.

The Executive Committee in Petitioner's case decided to proceed further and recommend that a formal complaint be filed against him under the rules established by the Supreme Court of Ohio.

A complaint was later filed (Appendix H), Petitioner filed his answer, and the case was subsequently heard before a panel of three commissioners of the Board of Commissioners on Grievances and Discipline. The hearing continued for a period of three days, petitioner being present with counsel throughout the hearing, and a total of thirteen witnesses appeared for the Dayton Bar Association and three for the Petitioner.

The Board subsequently issued its findings of fact and recommendation, (Appendix A-1) Petitioner asked for a review by the Ohio Supreme Court, briefs were filed by Petitioner and Respondent in the Ohio Supreme Court, oral arguments were presented by petitioner and respondent to the Ohio Supreme Court, and the Court subsequently issued its written opinion. (Appendix A-2) Two additional motions for reconsideration by the Petitioner were denied.

REASONS FOR NOT GRANTING THE WRIT

Petitioner has presented five questions, but has argued them under three headings under "Reasons for Granting the Writ." Respondent will address itself to the three arguments presented by Petitioner under "Reasons for Granting the Writ."

Petitioner complains that the interrogatories he filed requesting that he be advised in detail of the charges against him were not answered. This is true as there is no provision under the rules of the Ohio Supreme Court or elsewhere providing for interrogatories. Appendix G filed herewith, contains copies of the correspondence between Petitioner and attorneys for respondent concerning the interrogatories. On May 21, 1973, (Appendix G-1) Petitioner wrote to the attorneys for Respondent asking for a complete breakdown of

all the charges after receiving the complaint filed against him. Respondent's attorneys replied (Appendix G-2) on May 30, stating that a breakdown of the charges would not be furnished for two reasons:

> "First of all, you have been furnished with copies of all written complaints filed against you in the past by the Dayton Bar Association, you have been kept informed of the investigations by the Dayton Bar as they proceeded, and you have met with the Ethics Committee of the Dayton Bar Association concerning these charges and discussed the complaints with the members of the Committee."
>
> "In addition, since there are no procedural rules established concerning a Bill of Particulars, we would not wish to limit the scope of our prosecution in any way by narrowing or delineating the charges further at this time."

Subsequently, on June 5, 1973 (Appendix G-3) Petitioner submitted his interrogatories. (Appendix C-2) His request was answered on June 18, 1973 by attorneys for the Respondent (Appendix G-4) stating in substance that the interrogatories would not be answered for the same reasons as set forth in the previous letter of May 30, 1973. (Appendix G-2)

Under the procedure initiated by the Ohio Supreme Court for Discipline of Ohio Lawyers, petitioner had the right to take depositions in the event that he felt more information was needed. (Appendix E, Rule 4; Appendix D, Rule 5 (32)).

As can be seen from a careful examination of Appendix G, and from the foregoing, it is clear that the petitioner had ample opportunity to discover in detail the evidence against him and had, in fact, received detailed and written complaints concerning most of the evidence presented at the subsequent hearing in some cases several months and in other cases many months before the hearing was in fact conducted.

Petitioner complained that the Ohio Supreme Court found him guilty of violating Canon 9-102 (B) (3), "Failure to maintain complete records of all funds. . .coming into the possession of the lawyer and render appropriate accounts to his client regarding them," but that Petitioner was never charged with a violation of that section of the Canon and was

therefore, never given an opportunity to present evidence to rebut that particular finding.

An examination of the complaint and certificate originally filed against Petitioner (Appendix H) will show that Count 6 charges Petitioner with a wilful breach of Canon 9, Disciplinary Rule 9-102 in that respondent caused funds of clients to be deposited in bank accounts maintained without the State of Ohio in which were funds belonging to Petitioner and in that Petitioner converted to his own use trust funds belonging to his clients. Petitioner was indeed found guilty of the violation of this particular Canon in several respects as the record shows.

Petitioner is apparently complaining about the one finding against him by the Ohio Supreme Court which concerned his failure to keep accurate records concerning certain savings accounts in which he deposited clients' funds, kept inadequate records, and took the interest earnings for himself. An examination of the transcript of the proceedings before the Board (Pages 329 to 352) will show a detailed direct examination by counsel for the Dayton Bar Association and cross examination by the Petitioner of the savings and loan company official who testified concerning the trust savings accounts. Every opportunity was given to the Petitioner for cross examination (which he used) and examination of the original bank records, as well as the opportunity to testify concerning the trust savings account himself which he did while a witness before the Board.

Thus, the argument of the Petitioner that he was never given an opportunity to present evidence to rebut that particular finding is without merit.

Petitioner next complains that the Ohio Supreme Court found him guilty of charging a Mr. Garrett excessive fees in violation of DR2-106 and that Petitioner had presented no evidence on that issue.

The charge involving one Harry E. Garrett, Jr. appears in the transcript commencing on Page 121 and ending on Page 145. Essentially, the charge involved Petitioner's abandonment of a client on trial in a criminal case in the Court of Judge Neal Zimmers, Jr., the witness who appeared at the hearing before the Board. Petitioner, although he represented Mr. Garrett, did not appear at Mr. Garrett's trial because he had not been paid his fee in full. As a result, Judge Zimmers found him guilty of

contempt of court and fined him $450. The contempt of court case was appealed by Petitioner to the Ohio Supreme Court where the conviction was upheld. **State v. Weiner** (1974), 37 Ohio St. 2d 11.

The question of Mr. Garrett's payment of fees to Petitioner was discussed several times throughout the record and was very definitely in issue throughout the proceedings. The findings of fact and recommendation issued by the Board of Commissioners (Appendix A-1, Page 4) found Petitioner quilty of wilful breach of Canon 1, Disciplinary Rule 1-102, Section (A) (5) and Canon 2, Disciplinary Rule 2-106 (A), and further, that he had engaged in conduct prejudicial to the administration of justice in that he had failed to notify the Court of his non-appearance, had "used" the Court as a lever to collect fees shortly before trial time, and had withdrawn from employment without taking reasonable steps to protect the rights of his clients. Thus, it is quite clear that not only has the issue of fees been raised at the hearing, but also a finding had been made by the Board of Commissioners. Simply because one of the Board members had remarked that "the question of the amount of the fee isn't involved" does not mean that Petitioner could not be found guilty of any violation.

One of the members of the Board questioned Mr. Weiner as follows:

Q "With reference to this Garrett case, there was some testimony by Judge Zimmers that Mr. Garrett had paid you a $450 retainer fee in that case; is that right?

A He had paid $450 toward the $600 retainer fee on the DWI, that is correct.

Q And that you have applied the $450 to his mother's bill?

A No."

Summarizing the Garrett matter, then, there was involved in this one case disrespect for Judges and for the legal system, conduct prejudicial to the administration of justice, withdrawal from employment without taking reasonable steps to protect the rights of clients, and the charging of excessive fees. The fact that the excessive fees charged was a relatively small part

of the Garrett matter overall, certainly cannot be shown to be prejudicial to Petitioner, as he had more than adequate notice of the charge.

Petitioner contends that the fact that the Ohio Supreme Court found him guilty of charging Mr. Garrett excessive fees in violation of DR2-106 violated the guidelines laid down in **In re Ruffalo,** 390 US 544. The Ruffalo case involved the disbarment of an Ohio lawyer from practicing in Federal Court who had already been disbarred by the Ohio Supreme Court. The thrust of the opinion was that disbarment in a state court does not necessarily disbar a lawyer from the Federal Court and that charges against a lawyer in a disbarment proceeding must be made so that the lawyer has opportunity to answer them. In the **Ruffalo** case, *supra,* an additional charge was formally placed against the Petitioner in the disbarment proceedings as a result of testimony elicited from the Petitioner and another individual at the hearing. Such was not the case here.

During the testimony of Judge Neal Zimmers which concerned Petitioner's failure to appear in Court to represent Garrett, the matter of the fees charged Mr. Garrett was discussed at length.

Subsequently, while the Petitioner was being examined during the disbarment proceedings, the matter of excessive fees in the Garrett case came up again. A careful reading of the record (Pages 411 to 429) will demonstrate that the comments of the hearing officers concerning the fact that the fee was not in issue were directed to the overriding proposition that the failure of Petitioner to appear for the hearing to represent his client was the real crux of the Garrett charge. As a matter of fact, even after these comments in passing were made by two of the three hearing officers, Mr. Weiner continued to testify concerning the fees charged Mr. Garrett. (Record Page 417, Page 418 and Page 423) In part two of his argument (Petition for a Writ of certiorari, Page 7) Petitioner again attacks the findings in the Garrett case on the ground that Mr. Garrett never appeared nor testified before the Disciplinary panel, therefore, denying Petitioner the right of cross-examination. Petitioner cited the case of **Pointer v. Texas,** 380 US 400, concerning the right of confrontation and cross examination as being essential and fundamental for a fair trial.

The **Pointer** case, *supra,* held that in a charge of robbery

against a defendant, the introduction of a transcript of a witness' testimony given at a preliminary hearing at which defendant was not represented by counsel and had no opportunity to cross examine the witness, violated the defendant's right to confront witnesses against him.

In the present case, the testimony of Garrett himself was completely unnecessary. The crux of the charges against Petitioner arising from the Garrett matter involved disrespect for judges and the legal system, the charging and collecting of clearly excessive fees, engaging in conduct prejudicial to the administration of justice in failing to notify the Court of his non-appearance, "using the Court as a lever to collect fees shortly before trial time, and withdrawing from employment without taking reasonable steps to protect the rights of his clients." The proof of none of these charges required the testimony of Mr. Garrett.

Additionally, the Petitioner was not only well aware of the fact that his activities in the representation of Garrett would be a major factor in the disbarment proceedings, but he had the right as set forth previously to subpoena witnesses on his behalf and could have had Mr. Garrett present in person as a witness had this been his desire.

The fact that Mr. Garrett never filed or registered a complaint against the Petitioner, is completely irrelevant. As pointed out, the Petitioner had abundant notice that the Garrett matter would be in issue and in fact at the time of the disciplinary hearing had appealed his contempt of court citation arising from the Garrett matter to the Ohio Supreme Court.

Petitioner's final argument contends that his being found guilty of a violation of the Canon of professional ethics in failing to file a divorce decree after the divorce had been granted because of the failure of his client to pay him the balance of the fee owing constitutes the forcing of Petitioner and his fellow lawyers to engage in a condition of involuntary servitude in violation of the equal protection clause of the 14th amendment of the United States Constitution.

A brief review of Petitioner's activities in withholding the filing of the decree is in order. Mrs. Shirley Ison, a witness at the disbarment proceedings, and whose testimony appears in the record, pages 97 to 121, first employed the Petitioner in June of 1970 because of marital problems. Fees were discussed

at the first meeting at which time Mrs. Ison was advised she would have to pay $100 to start the divorce and that the total fee would be $300, her husband being required to pay $150 of the total. Petitioner told her that the filing fee was included in the $100 retainer, which was a part of the total figure of $300. A divorce action was filed and the temporary hearing held. It appeared that Mrs. Ison and her husband commenced living together again, that this did not work out satisfactorily, that they again separated and that the Petitioner was asked to go ahead with the divorce. A supplemental complaint was filed, considerable difficulty was had in serving the husband, and eventually a final divorce hearing was held. Mrs. Ison complained that shortly before the final divorce hearing she talked with Petitioner and he showed her a ledger card stating that he had been paid approximately $580 and that she still owed him $488. Petitioner told Mrs. Ison he would not go ahead with the final hearing unless she guaranteed him the balance would be paid. The final hearing was held on August 9, 1971, and several months later Mrs. Ison discovered that a final decree had not been filed and that she was still married. She stated that Petitioner threatened to call her husband and tell him they were still married unless the balance of the fee was paid.

Also testifying at the disbarment proceedings was Judge Arthur O. Fisher of the Montgomery County Court of Common Pleas, Division of Domestic Relations, who heard the Ison case and whose testimony appears in the record commencing on Page 81 and ending on Page 97. Judge Fisher testified that the divorce hearing involving Mrs. Ison was held on August 6, 1971, and that the action was dismissed in October of 1971 because the divorce decree had not been filed. Attorney Raymond Clayman, who later represented Mrs. Ison, called Judge Fisher on behalf of Mrs. Ison. At this, Judge Fisher called Petitioner, asked why a decree had not been filed, and was informed by Petitioner that he had over $1,000 worth of work in the case, that Mrs. Ison had paid him $600, and that he would not put on the divorce decree until the balance was paid. Judge Fisher then instructed Mr. Clayman to file the decree for Mrs. Ison and this was accomplished on January 6, 1972.

The Board of Commissioners on Grievances and Discipline, in its findings of fact and recommendations, found

a wilful breach of Canon 2, Disciplinary Rule 2-110, in the Ison matter in that Petitioner withdrew from his employment without taking reasonable steps to protect the rights of his client. In passing, the Board mentioned that refusal to proceed to hearing until fees are secured or paid is one thing; refusal to put on the entry after the hearing, which refusal had the effect of working a dismissal, is an entirely different matter.

Thus, it would appear that Petitioner claims that his contract rights in collecting fees from his clients override and are superior to his duty to properly represent a client and not abandon the client once representation is undertaken.

CONCLUSION

Petitioner has been tried pursuant to the disciplinary rules established by the Supreme Court of the State of Ohio and has been appropriately disciplined. The procedures outlined above and followed by the Dayton Bar Association in the investigation of complaints against attorneys guarantee the protection of the rights of an individual lawyer. The complaints against the Petitioner were well-documented and at all times throughout the proceedings the Petitioner was well aware of the nature and magnitude of the charges against him as well as the identities of the individuals involved.

The disciplinary rules of the Ohio Supreme Court guarantee a hearing to a lawyer charged with unprofessional conduct before members of the Board of Commissioners on Grievances and Discipline. The hearing is conducted in secret if that is the desire of the accused (as was the case here), witnesses are sworn, and testimony is given with full rights of examination and cross-examination. Provisions are made for subpoenaing witnesses and for the taking of depositions.

After the hearing before the Board, the parties are given the right to file briefs as was done in this case and, after the finding of the Board of Commissioners and its recommendation, further opportunity is presented for the filing of briefs and an appearance before the Supreme Court of the State of Ohio. This, too, was done in this case.

It is submitted that the rights of the Petitioner have been fully protected and a Writ of Certiorari should not issue in this case.

Respectfully submitted,

Richard G. Snell
2260 Winters Bank Tower
Dayton, Ohio 45402

and

Fred M. Izenson
1900 Winters Bank Tower
Dayton, Ohio 45402

Attorneys for Dayton Bar
Association, Respondent

APPENDIX A-1

**BEFORE THE BOARD OF COMMISSIONERS
ON
GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF OHIO**

In re:	:	CASE NO. 181
Complaint against:	:	
Dan D. Weiner,	:	
Respondent,	:	Findings of Fact and Recommendation
Dayton Bar Association,	:	of the Board of Commissioners on
Relator.	:	Grievances and Discipline of The Supreme Court of Ohio

This matter came on for hearing on October 2, 3 and 4, 1973, before the duly appointed hearing panel of the Board of Commissioners on Grievances and Discipline on the complaint, the answer and the evidence.

Respondent, Dan D. Weiner, age 41, of Kettering, was admitted to the Ohio Bar and started practice in Dayton in 1963, first in a firm, but since 1965 as a sole practitioner, against whom the following complaint was filed:

> "Now comes the Relator and alleges that Dan D. Weiner, an Attorney at Law, duly admitted to the practice of law in this State of Ohio, is guilty of the following misconduct:
>
> "1. Willful breach of Canon 1, Ethical Consideration 1-5, in that Respondent is guilty of intemperate and undignified conduct in evidencing disrespect for the legal system and for duly acting and qualified judges in the performance of their duties.
>
> "2. Willful breach of Canon 1, Disciplinary Rule 1-102 Misconduct (A) (5) in that Respondent's disrespect for judges as aforesaid and for the legal system as aforesaid constituted conduct that is prejudicial to the administration of justice.

"3. Willful breach of Canon 2, Disciplinary Rule 2-106 Fees for Legal Services (A) in that Respondent entered into agreements for and charged and collected clearly excessive fees for legal services rendered.

"4. Willful breach of Canon 2, Disciplinary Rule 2-110, Withdrawal from employment (A) (2) in that Respondent withdrew from employment without taking reasonable steps to avoid foreseeable prejudice to the rights of his client.

"5. Willful breach of Canon 7, Disciplinary Rule 7-106 (C) (6) in that Respondent engaged in undignified and discourteous conduct which was degrading to a tribunal.

"6. Willful breach of Canon 9, Disciplinary Rule 9-102 in that Respondent caused funds of clients to be deposited in bank accounts maintained without the State of Ohio in which were funds belonging to Respondent and in that Respondent converted to his own use trust funds belonging to his clients."

To the within complaint Respondent in propria persona filed interrogatories in the usual form, but upon the return of his counsel from a trip to Europe the counsel filed an answer denying all the allegations of each paragraph of the complaint. The verbatim complaint and these facts are recited herein for the reason that the Panel took the position that Respondent and his counsel had thereby elected to abandon the interrogatories.

FINDINGS OF FACT

FRED M. MILLER

Fred M. Miller, a J. C. Penney clerk of four years, earning about $6000 to $6500 per year, was divorced January 28, 1968 from his 1946 wife. Miller had made $18,000 per year on a previous job. Support payments of $60.00 per week resulted in arrearage of $4,612.67 when Miller consulted Respondent in July 1970 about the contempt proceeding brought against Miller. Respondent thought fee would be $100 to $150. No court appearances - Respondent had conference between Miller and former wife and payments were reduced to $37.50 per week and released from all back support.

Respondent submitted statement of $315.00 for 7 hours 55 minutes with a balance of $296.70. Miller complained by phone. Respondent said he would take nothing less than his statement. Miller stated that Respondent's first explanation of an hourly billing was in the second or third phone conversation after his complaint. Miller said Respondent said he would take Miller to court - garnishee his wages and "see him in jail" but on cross-examination admitted he did not know whether this was with reference to non-payment of support or non-payment of attorney fees. Upon cross-examination Miller admitted that Respondent said at his first call that he could not give an exact bill and that he would charge at an hourly rate.

Miller was not satisfied with original attorney in divorce case and has been to another attorney since Respondent.

With regard to the willful breach of Canon 2, Disciplinary Rule 2-106 (A) there is evidence the Respondent's fees are high but there is not sufficient evidence to show that his fees are illegal or clearly excessive and for that reason this count in regard to this complaint should be dismissed.

SHIRLEY ISON

Shirley Ison consulted Respondent in June 1970 about a divorce and said that Respondent quoted a fee of $300.00 with a retainer of $100.00, including filing fee and that husband would be required to pay $150.00

The $100.00 retainer was paid and case was filed, preliminary hearing held which Mrs. Ison attended and preliminary order made on support ($20.00 alimony, $20.00 child support and $10.00 litigation fees per week) but in August 1970, the parites briefly reconciled, then instructed Respondent to go ahead. A supplemental petition was filed August 27, 1970, but not being able to obtain service, the court refused to appoint a neighbor woman and finally appointed a private detective who after about three weeks obtained service on the husband.

Respondent in going over his ledger informed Mrs. Ison she had paid $580.00 and still owed $488.00 and he would go ahead with the final hearing is she agreed to pay the $488.00 balance. Shortly thereafter, an uncontested divorce hearing was held on August 9, 1971 and a divorce verbally announced. Several months later, Respondent phoned and advised Mrs.

Ison she was not divorced because the $488.00 balance had not been paid and by letter of November 8, 1971 said that unless final judgment entry was filed, the case would be dismissed.

Judge Arthur D. Fisher, Judge of Domestic Relations Division, who heard the case, phoned Respondent and asked why the decree had not been put on. Respondent said "he wasn't goint to put decree on" as Ison had paid Respondent but $600.00 on a fee of over $1,000.00.

The Court instructed Attorney Claymore to prepare and put on a decree which was done on January 6, 1972.

There is evidence that Respondent's fees are high, but there is not sufficient evidence to show that his fees are illegal or clearly excessive and for that reason this count in regard to this complaint should be dismissed.

With regard to willful breach of Canon 2, Disciplinary Rule 2-110, Respondent withdrew from his employment without taking reasonable steps to protect the rights of his client.

JUDGE NEAL ZIMMERS, JR.

Neal Zimmers, Jr., Montgomery County Court Judge, testified he called Respondent to say a jury trial in which Respondent represented the defendant was next on the docket. Respondent said he wanted to go on a Bar Association trip to Nassau, "that he wouldn't be there" and "he didn't think I would do anything about it." The court instructed the clerk to call off the jury and told Respondent his case would be first on the docket and to expect to go forward on it.

The case was re-assigned but on the week-end before, Respondent, who had been paid a total of $450.00 but not in full of his demand, told the Prosecutor that his client was going to obtain other counsel and that Respondent had withdrawn. The jury dismissed - Respondent was charged with and found guilty of contempt - fine $450.00, the exact amount of fee which he had collected which was affirmed by the Court of Appeals and Supreme Court of Ohio.

Respondent is guilty of willful breach of Canon 1, Disciplinary Rule 1-102 Section (A) 5 and Canon 2, Disciplinary Rule 2-106 (A) and has engaged in conduct prejudicial to the administration of justice in that he has failed to notify the Court of his non-appearance; has "used" the

Court as a lever to collect fees shortly before trial time and has withdrawn from employment without taking reasonable steps to protect the rights of his clients.

JUDGE HAROLD H. GALBRAITH

Harold H. Galbraith, Judge of Vandalia Municipal Court, presided over a two-day jury trial in which Respondent represented a defendant charged with possession of marijuana. In the course of his final argument, Judge Galbraith testified that Respondent said "I want you to listen to the Court's instructions and don't be **trapped** by the Court's instructions." We adjourned to chambers at my request after a rather stormy session - instigated mainly by myself. Court admonished Respondent and parties returned to the courtroom.

Respondent said "I apologize for whatever I said" and "don't let the Judge's instructions confuse you on aiding and abetting."

Judge testifies "I lost my composure somewhat." A juror was withdrawn and the jury dismissed. Respondent was cited for contempt, later summarily found guilty, fined $100.00, sentenced to three days in jail. Respondent appealed and while in Court of Appeals the Judge dismissed the charge saying "I figured Dan had enough problems." Respondent testified that court reporter read back "Don't be confused by the instructions on aiding or abetting."

The evidence is insufficient to sustain a willful breach of Canon 1, Ethical Consideration 1-5 or Canon 1, Disciplinary Rule 1-102 and the same should be dismissed.

MAGGIE WILLIAMS

Maggie Williams of Dayton, housewife and mother of three, was arrested for shoplifting dresses in Rikes Department Store and retained Respondent as he had previously represented her brother. Respondent supposedly said he would normally charge $500.00 but since Respondent had done work for her brother, he would do it for $350.00. Paid $200.00 and signed note.

Respondent conducted a hearing to suppress evidence. In the meantime, the Williams' became involved in a siding contract and after consultation with Respondent, Respondent arranged with the contractor to take back his material and cancel the contract for which there was a $50.00 fee.

Defendant quoted Respondent as saying his fee would be $1000.00 if it went to a jury trial and that a jury would cost $1000.00

Prior to what defendant thought was the final hearing, defendant had paid $320.00 and gave Respondent a check for $50.00 which he marked "account paid in full" but in an ante room prior to the supposed final hearing, Respondent informed defendant that he had billed her $50.00 an hour for everything and pulled out a $540.00 note for defendant to sign; that if defendant didn't sign, he would merely leave it up to the Judge. I will walk out and mark it off as a bad cause; that defendant could spend as much as 90 days in jail plus a $500.00 fine. After some remonstrance, defendant's husband signed the $540.00 note and Respondent required addition of words "on siding" to words "account paid in full" to last $50.00 check. Respondent then went into court and pleaded defendant guilty of lesser offense of trespassing, was assessed a fine of $100.00 which was paid out of her cash appearance bond.

Defendant was of the opinion she was to be tried by Court without a jury, but Respondent testified he had pre-arranged with the prosecutor to accept the plea to a lesser offense of trespassing.

At an adoption proceeding in Juvenile Court in the presence of a caseworker, defendant and her husband claimed that Respondent, who happened to be present, came over and asked defendant if that was the dress I was wearing the day I stopped at Rikes. Defendant thought this confrontation was after the Kettering Court hearing, while she was paying on her account and for the purpose of embarrassing her and prejudicing the pending adoption proceeding.

Examination of the record disclosed defendant first met Respondent March 29, 1971. Date of last adoption hearing August 27, 1971. July 2, 1972 date of last $50.00 check from defendant to Respondent; July 19, 1972 date of Kettering Court hearing - plea of guilty to lesser charge of trespasisng entered in lieu of shoplifting.

It, therefore, appears highly unlikely that the events that defendant related took place or with the implications that she imputed to them as this was eleven months before there was any mention of any additional fees and the onset of any strained relations between the parties.

There is evidence that Respondent's fees are high, but there is not sufficient evidence to show that they are illegal or clearly excessive and so the count as to willful breach of Canon 2, Disciplinary Rule 2-106 (A) should be dismissed. The threat to withdraw from employment without taking reasonable steps to protect the rights of his clients is a breach of Canon 2, Disciplinary Rule 2-110.

WILLIAM TURNER

William Herbert Turner had been divorced by his wife in Dayton, the wife getting custody of a six-year-old son, who then moved to Kentucky and from where the former wife initiated an action against Turner for back support under the Uniform Support for Dependents Act. Turner desired to get custody of the minor son but the amount of the back support was in dispute. Respondent required Turner to deposit with him $480.00 "cash in trust for back child support" before a proceeding for custody was initiated.

The custody matter was never filed. Respondent did some tax work for Turner's second wife and was consulted about an adoption of the child of the second Mrs. Turner which was never initiated. Turner eventually signed an $800.00 note for attorney fees in the custody proceeding which never went to court.

In a copy of a letter of December 17, 1969 to Kentucky Support Bureau - with signed P.S. to Turner, Respondent stated "-- I am going to hold the moneys that I am holding in trust and unless arrangements are made to start paying on the fees regularly, will apply that money towards them" (Relator's Exhibit #32) and eventually did apply said trust deposit to his fees without consent of Turner.

Respondent admitted the purpose of the $480.00 support payment fund had not been accomplished or the amount of the support payments determined when he took it for attorney fees on January 23, 1970.

This constitutes a willful breach of Canon 9, Disciplinary Rule 9-102.

RICHARD PARR

Richard Allen Parr was an electronic technician on a wind tunnel at a Frigidaire plant. He had access to classified work for the government. One evening after a beer drinking episode,

Parr attempted to locate the home of a male friend in the neighborhood. He parked his car and walked up and down the block to locate the correct apartment. When he found the apartment, he went to the front door, then thought he would pull a trick and went around to the back and stood on a chair to knock on the window. At the rear of the apartment he was accosted by a neighbor with a ball bat. This neighbor filed a charge of trespassing against Parr. He was eventually tried and acquitted in a one and one-half day jury trial in which Parr was represented by Dan D. Weiner.

Parr said at his first meeting, Respondent asked a retainer of $100.00 which Parr did not have, but at subsequent meetings before trial Respondent said that he charged $50.00 per hour and the fee would probably run around $500.00.

After the trial, Respondent mailed Parr a bill for $1,500.00 which was paid in full by Parr.

The fee charged is not excessive and this count should be dismissed.

SHIRLEY ISON

With regard to willful breach of Canon 2, Disciplinary Rule 2-110, Respondent withdrew from his employment without taking reasonable steps to protect the right of his client and would merit a public reprimand, if this charge stood alone. Refusal to proceed to hearing until fees are secured or paid is one thing; refusal to put on the entry after the hearing, which refusal has the effect of working a dismissal, is an entirely different matter.

JUDGE ZIMMERS

If this charge stood alone, it would merit reprimand, probably a public reprimand.

MAGGIE WILLIAMS

The threat of withdrawal from employment under the circumstances here indicated is a breach of Canon 2, Disciplinary Rule 2-110 and would certainly merit a public reprimand if standing alone.

WILLIAM TURNER

The evidence here indicates clear and willful breach of Canon 9, Disciplinary Rule 9-102.

TRUST ACCOUNTS

Prior to 1964, Respondent established a checking account in Creve-Couer, Missouri, which account he designated as a trust account and has continued to use this account and this account was still in existence at the time of hearing. Since coming to Dayton, he also established two trust savings accounts in Homestead Savings and Loan in Dayton from which and to which he has transferred funds from and to the trust checking account in Missouri. He has established an Ohio trust account in First National Bank, Dayton, in March, 1973. Respondent could not tell how much in the various accounts was his own funds and how much was funds of various clients, merely that he had more funds in these accounts than he owed to clients, and that he had no general or master ledger or account to which he or any employee of his could refer and determine and report the exact amount of clients' funds in each account. He further indicated that interest from the trust savings accounts was paid to him and that he paid income taxes on the same and did not apportion it to the various clients' funds. This commingling of funds has existed for nearly a decade and was not terminated after the filing of the complaint, continuing apparently at the time of the hearing. This situation is in sharp contrast with his detailed bookkeeping, billing and collecting methods in evidence as to attorney fees. His handling of his trust accounts and clients' funds and his persistence in using a foreign trust account or an account designated by him as a trust account in another state constitutes a clear and willful breach of Canon 9 and Disciplinary Rule 9-102 (A) and (B) (3) and is misconduct as defined in section (5) (a) of Rule V of The Supreme Court Rules For The Government Of The Bar Of Ohio.

RECOMMENDATION

In view of the collective and cumulative evidence of misconduct, and an apparent basic indisposition to a proper conduct of the practice of law with the interests of clients subordinated to his own interests in his mind, it is the recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio that Respondent, Dan D. Weiner, be suspended for an indefinite period of time from the practice of law as provided in section

8) (b) of Rule V of The Supreme Court Rules For The Government Of The Bar Of Ohio.

Chairman, Board of Commissioners on
Grievances and Discipline of
The Supreme Court of Ohio

Secretary, Board of Commissioners on
Grievances and Discipline of
The Supreme Court of Ohio

APPENDIX A-2

DAYTON BAR ASSOCIATION *v.* WEINER.

40 Ohio St. 2d 7.]

Attorneys at law — Misconduct — Acts warranting indefinite suspension.

(No. D.D. 74-6—Decided October 16, 1974.)

ON CERTIFIED REPORT by the Board of Commissioners on Grievances and Discipline.

Respondent, Dan D. Weiner, was admitted to the practice of law in Ohio in 1963, and has, since then, engaged in such practice in the city of Dayton.

This disciplinary matter came before the Board of Commissioners on Grievances and Discipline upon the complaint and certificate of the Dayton Bar Association, alleging certain violations by respondent of the Code of Professional Responsibility.

The complaint enumerates respondent's alleged willful breach of six specific portions[1] of the Code: Canon 1, EC 1-5[2]; Cannon 1, DR 1-102 (A) (5)[3]; Canon 2, DR

[1] The disciplinary rules and ethical considerations contained in the Code of Professional Responsibility are commonly denoted DR and EC, respectively.

[2] EC 1-5 reads:

"A lawyer should maintain high standards of professional conduct and should encourage fellow lawyers to do likewise. He should be temperate and dignified, and he should refrain from all illegal and morally reprehensible conduct. Because of his position in society, even minor violations of law by a lawyer may tend to lessen public confidence in the legal profession. Obedience to law exemplifies respect for law. To lawyers especially, respect for the law should be more than a platitude."

[3] DR 1-102(A) (5) reads:

"MISCONDUCT.

"(A) A lawyer shall not:

"* * *

"(5) Engage in conduct that is prejudicial to the administration of justice."

2-106 (A)[4]; Canon 2, DR 2-110 (A) (2)[5]; Canon 7, DR 7-106 (C) (6)[6]; and Canon 9, DR 9-102[7].

[4]DR 2-106 (A) reads:

"FEES FOR LEGAL SERVICES.

"(A) A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee."

[5]DR 2-110 (A) (2) reads:

"WITHDRAWAL FROM EMPLOYMENT.

"(A) In general.

"* * *

"(2) In any event, a lawyer shall not withdraw from employment until he has taken reasonable steps to avoid foreseeable prejudice to the rights of his client, including giving due notice to his client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules."

[6]DR 7-106 (C) (6) reads:

"TRIAL CONDUCT.

"* * *

"(C) In appearing in his professional capacity before a tribunal, a lawyer shall not:

"* * *

"(6) Engage in undignified or discourteous conduct which is degrading to a tribunal."

[7]DR 9-102 reads:

"PRESERVING IDENTITY OF FUNDS AND PROPERTY OF A CLIENT.

"(A) All funds of clients paid to a lawyer or law firm, other than advances for costs and expenses, shall be deposited in one or more identifiable bank accounts maintained in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:

"(1) Funds reasonably sufficient to pay bank charges may be deposited therein.

"(2) Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

"(B) A lawyer shall:

"(1) Promptly notify a client of the receipt of his funds, securities, or other properties.

I

The charges for violating Canon 1, EC 1-5 and DR 1-102 (A) (5) relate to respondent's alleged misconduct before Neal F. Zimmers, Jr., Judge of the Montgomery County Court and Harold H. Galbraith, Judge of the Vandalia Municipal Court. Respondent was found guilty of contempt of court in a matter before Judge Zimmers, and the facts surrounding that occurrence are found in *State* v. *Weiner* (1974), 37 Ohio St. 2d 11, in which case this court affirmed the contempt citation.

The incident before Judge Galbraith may be summarized as follows: In the course of his closing argument as defense counsel in a criminal trial, respondent said, "I want you to listen to the court's instructions and don't be trapped by the court's instructions." Judge Galbraith immediately ordered counsel into chambers and admonished respondent. Upon returning to the courtroom, respondent said to the jury, "I apologize for whatever I said" and "don't let the judge's instructions confuse you on aiding and abetting." At this juncture, the court declared a mistrial, and cited respondent for contempt. Later, however, Judge Galbraith withdrew the contempt charge. The board concluded that the evidence was insufficient to sustain a willful breach of Canon 1, EC 1-5 and DR 1-102.

II

The charges for violating Canon 2, DR 2-106 (A) relate to respondent allegedly charging or collecting illegal or clearly excessive fees from five of his clients: Harry E. Garrett, Jr., Maggie Williams, Richard A. Parr, Fred M. Miller and Shirley Ison.

The facts of the Garrett case are found in *State* v. *Weiner*, *supra*, and the board found a violation of DR 2-106 (A).

"(2) Identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable.

"(3) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them.

"(4) Promptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive."

The basis for the charge of respondent's breach of DR 2-106 (A) in the Maggie Williams matter is that respondent charged an excessive fee for representing her in a shoplifting prosecution and for making a settlement with a house-siding contractor. The board found however that the evidence was insufficient to sustain the count and recommended that it be dismissed.

Richard A. Parr was represented by respondent in a trespassing prosecution, which ended in a jury verdict of acquittal. Parr testified that he was unable to pay a requested $100 retainer, that respondent later advised him that the fee would be on an hourly rate of $50 per hour, and that it would run "around $500." After the trial, respondent requested and received $1,500 for his services. The board found that the fee charged was not excessive, and recommended that the count be dismissed.

Fred M. Miller consulted respondent in connection with a contempt proceeding for nonpayment of child support. Miller admitted that respondent had advised him at the outset that the services would be charged at an hourly rate and that an exact bill could not be given, but that it would be $100 to $150. After representing Miller, respondent tendered a statement for $315 for 7 hours and 55 minutes, to which Miller objected. The board found that the evidence was insufficent to sustain the count and recommended that it be dismissed.

Shirley Ison consulted respondent about obtaining a divorce. Respondent allegedly quoted a fee of $300. Respondent filed the necessary papers, later discovering that Mrs. Ison had reconciled with her husband. Subsequently, Mrs. Ison requested that respondent reinstitute the divorce proceedings. Respondent again filed the necessary papers, but experienced unusual complications in making service of process on his client's husband. Fourteen months after commencement of the original filing, Mrs. Ison obtained an uncontested divorce. Respondent submitted a total bill for $1,068 based upon an hourly rate, to which bill Mrs. Ison objected. The board found that the evidence was insufficient to sustain the count and recommended that it be dismissed.

III

The charges for violating Canon 2, DR 2-110 (A) (2), *supra*, relate to respondent allegedly withdrawing from employment without taking reasonable steps to avoid foreseeable prejudice to the rights of three of his clients: Garrett, Maggie Williams, and Shirley Ison.

The facts surrounding respondent's misconduct in connection with Garrett are fully reported in *State* v. *Weiner*, *supra*, and may be summarized as follows: Respondent was having difficulty in collecting the remainder of a retainer fee from Garrett. Garrett informed respondent that he desired to procure other counsel. Respondent did not object, and advised Garrett to be present with his new attorney at the trial. Respondent allegedly informed the prosecutor of his withdrawal from the Garrett case, asked that the information be passed along to the trial judge, and requested a return call if problems developed. On the date of the trial, Garrett appeared at the courthouse without counsel, and respondent failed to appear there or at another trial he had scheduled for that day, allegedly because he was ill and remained at home. The board found that respondent's conduct constituted a breach of DR 2-110 (A) (2), *supra*, but recommended that "if this charge stood alone it would merit a reprimand, probably a public reprimand."

Respondent's misconduct toward Maggie Williams, on this count, is reported by the board as follows:

"Prior to what defendant [Williams] thought was the final hearing defendant had paid $320 and gave respondent a check for $50 which he marked 'account paid in full' but in an ante room prior to the supposed final hearing, respondent informed defendant that he had billed her $50 an hour for everything and pulled out a $540 note for defendant to sign; that if defendant didn't sign he would merely leave it up to the judge. I will walk out and mark it off as a bad cause; that defendant could spend as much as 90 days in jail plus a $500 fine. After some remonstrance defendant's husband signed the $540 note and respondent required addition of words 'on siding' to words 'account

paid in full' to last $50 check. Respondent then went into court and pleaded defendant guilty of lesser offense of trespassing, was assessed a fine of $100, which was paid out of her cash appearance bond.

"Defendant was of the opinion she was to be tried by court without a jury but respondent testified he had prearranged with the prosecutor to accept the plea to a lesser offense of trespassing."

Upon these facts the board concluded:

"The threat of withdrawal from employment under the circumstances here indicated is a breach of Canon 2, Disciplinary Rule 2-110 and would certainly merit a public reprimand if standing alone."

Respondent's alleged misconduct toward Shirley Ison may be summarized as follows: On August 9, 1971, Mrs. Ison obtained an oral decree of divorce from the bench. Several months later, respondent advised Mrs. Ison that she was not divorced because the $488 fee balance had not been paid, and that her case would be dismissed unless a judgment entry were filed. The judge inquired of respondent why the judgment had not been filed. Respondent responded that "he wasn't going to put it [the decree] on" as Ison had paid him but $600 on a fee of over $1,000. Whereupon, another attorney put the decree on at the judge's request.

Upon these facts the board concluded:

"* * * Refusal to proceed to hearing until fees are secured or paid is one thing; refusal to put on the entry after the hearing, which refusal has the effect of working a dismissal, is an entirely different matter," and constituted a willful breach of Canon 2, DR 2-110, *supra*.

IV

The charges relating to respondent's alleged breach of Canon 7, DR 7-106 (C) (6), *supra*, are unspecified in the report of the board, and will therefore be regarded as abandoned.

V

In the final count, respondent is charged with:

"Willful breach of Canon 9, Dr 9-102 in that respondent caused funds of clients to be deposited in bank accounts maintained without the state of Ohio in which were funds belonging to respondent, and in that respondent converted to his own use trust funds belonging to his clients."

The facts concerning the first portion of this count are reported by the board, as follows:

"Prior to 1964 respondent established a checking account in Creve-Couer, Missouri, which account he designated as a trust account and has continued to use this account and this account was still in existence at the time of hearing. Since coming to Dayton he also established two trust savings accounts in Homestead Savings and Loan in Dayton from which and to which he has transferred funds from and to the trust checking account in Missouri. He has established an Ohio trust account in First National Bank, Dayton, in March, 1973. Respondent could not tell how much in the various accounts was his own funds and how much was funds of various clients, merely that he had more funds in these accounts than he owed to clients, and that he had no general or master ledger or account to which he or any employee of his could refer and determine and report the exact amount of clients' funds in each account. He further indicated that interest from the trust savings accounts was paid to him and that he paid income taxes on the same and did not apportion it to the various clients' funds. This commingling of funds has existed for nearly a decade and was not terminated after the filing of the complaint, continuing apparently at the time of the hearing. This situation is in sharp contrast with his detailed bookkeeping, billing and collecting methods in evidence as to attorney fees. His handling of his trust accounts and clients' funds and his persistence in using a foreign trust account or an account designated by him as a trust account in another state constitutes a clear and willful breach of Canon 9 and Disciplinary Rule 9-102 (A) and

(B) (3) and is misconduct as defined in Section (5) (a) of Rule V of the Supreme Court Rules For The Government Of The Bar Of Ohio."

The second portion of the count relates to respondent's alleged mishandling of funds entrusted to him by a client, William H. Turner, which is summarized as follows: Turner consulted respondent in order to obtain custody of his son who resided with his mother in Kentucky. Respondent required Turner to deposit with him $480 "cash in trust for back child support" before he would undertake a custody proceeding. Turner delivered the $480 to respondent, but the custody matter was never filed. Subsequently, respondent advised Turner that, unless arrangements were made to start regular payment of attorney fees, respondent would apply the trust fund to his fees. Respondent eventually applied the trust deposit to his fees without Turner's consent, for which the board found a willful breach of Canon 9, DR 9-102, *supra*.

VI

The recommendation of the board reads as follows:

"In view of the collective and cumulative evidence of misconduct, and an apparent basic indisposition to a proper conduct of the practice of law with the interests of clients subordinated to his own interests in his mind, it is the recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio that respondent, Dan D. Weiner, be suspended for an indefinite period of time from the practice of law as provided in Section (6) (b) of Rule V of the Supreme Court Rules For The Government Of The Bar Of Ohio."

The matter is now before this court for consideration of the report of the board and the objections of respondent.

Mr. Richard G. Snell and *Mr. Fred M. Izenson*, for relator.

Mr. Horace W. Baggott and *Mr. Raymond A. White*, for respondent.

Per Curiam. We have examined the record of the testimony taken at the hearing before the Board of Commissioners on Grievances and Discipline and the exhibits presented by both relator and respondent. After a careful analysis of such evidence as to each count passed upon by the board, this court agrees that the record amply supports the findings of the board that respondent has violated the provisions of Canon 1, DR 1-102 (A) (5); Canon 2, DR 2-106 (A); Canon 2, DR 2-110 (A) (2); and Canon 9, DR 9-102, and that, therefore, respondent is guilty of misconduct as defined in Gov. R. V (5) (b).

We affirm the findings of the board and overrule respondent's objections thereto.

We come now to the recommendation of the board that respondent be suspended for an indefinite period from the practice of law pursuant to Gov. R. V (6) (b). In our review of the whole record, and in consideration of respondent's objections and contentions, we find no facts in mitigation or justification of his actions.

Therefore, the findings and report of the Board of Commissioners on Grievances and Discipline are confirmed, and it is the judgment of this court, pursuant to Gov. R. V (6) (b), that respondent, Dan D. Weiner, be suspended for an indefinite period from the practice of law.

Judgment accordingly.

O'NEILL, C.J., HEPBERT, CORRIGAN, STERN, CELEBREEZE, W. BROWN and P. BROWN, JJ., concur.

APPENDIX B-1

The Supreme Court of the State of Ohio
Of the Term of January, 1974.

To-wit: October 16, 1974.

Dayton Bar Association, Relator,
v.
Dan D. Weiner, Respondent.

ON CERTIFIED REPORT BY THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE DD No. 74-6

In appearing to the Court that the Board of Commissioners on Grievances and Discipline filed its Final Report in this Court on June 7, 1974, recommending that the respondent, Dan D. Weiner, be indefinitely suspended from the practice of law, pursuant to Rule V, Section 6b of the Supreme Court Rules for the Government of the Bar of Ohio, and it further appearing that respondent filed objections to the Final Report of the Board of Commissioners on Grievances and Discipline, this cause was argued by counsel. On consideration thereof, it is ordered and adjudged by this Court that the report of the Board be confirmed and respondent suspended from the practice of law for an indefinite period.

The respondent, Dan D. Weiner, is hereby ordered to cease and desist from the practice of law in any form and is forbidden to appear on behalf of another before any court, judge, commission, board, administrative agency or other public authority. It is further ordered that he be forbidden to counsel or advise, or prepare legal instruments for others or in any manner perform services of any kind for others which would constitute the practice of law. He is also forbidden to hold himself out to another or to the public as being authorized to perform legal services, and he is hereby divested of each, any and all of the rights.

privileges and prerogatives customarily accorded to a member in good standing of the legal profession of Ohio.

It is further ordered that the respondent, Dan D. Weiner, surrender his certificate of admission to practice to the Clerk of this Court forthwith and that his name be stricken from the roll of attorneys maintained by this Court.

It is further ordered that the respondent, Dan D. Weiner, pay the costs of these proceedings taxed in the amount of Two Thousand Two Hundred Ninety Seven Dollars and twenty-eight cents ($2,297.28).

It is further ordered that the Clerk of this Court issue certified copies of this entry as provided for in Section 19, Rule V of the Supreme Court Rules for the Government of the Bar of Ohio.

APPROVED:

C. WILLIAM O'NEILL,

Chief Justice

APPENDIX B-2

THE SUPREME COURT OF THE STATE OF OHIO

Dayton Bar Association,
Relator,

vs.

Dan D. Weiner,
Respondent.

1974 TERM
To wit: November 1, 1974
No. DD 74-6
REHEARING

It is ordered by the court that rehearing in this case is denied.

APPENDIX B-3

THE SUPREME COURT OF THE STATE OF OHIO

Dayton Bar Association,
Relator,

vs.

Dan D. Weiner,
Respondent.

1974 TERM
To wit: November 29, 1974
No. DD 74-6
REHEARING

It is ordered by the court that rehearing in this case is denied.

APPENDIX C-1

CHARGES AGAINST PETITIONER

"1. Willful breach of Canon 1, Ethical Consideration 1-5, in that Respondent is guilty of intemperate and undignified conduct in evidencing disrespect for the legal system and for duly acting and qualified judges in the performance of their duties.

"2. Willful breach of Canon 1, Disciplinary Rule 1-102 Misconduct (A)(5) in that Respondent's disrespect for judges as aforesaid and for the legal system as aforesaid constituted conduct that is prejudicial to the administration of justice.

"3. Willful breach of Canon 2, Disciplinary Rule 2-106 Fees for Legal Services (A) in that Respondent entered into agreements for and charged and collected clearly excessive fees for legal services rendered.

"4. Willful breach of Canon 2, Disciplinary Rule 2-110, Withdrawal from employment (A)(2) in that Respondent withdrew from employment without taking reasonable steps to avoid foreseeable prejudice to the rights of his client.

"5. Willful breach of Canon 7, Disciplinary Rule 7-106 (C)(6) in that Respondent engaged in undignified and discourteous conduct which was degrading to a tribunal.

"6. Willful breach of Canon 9, Disciplinary Rule 9-102 in that Respondent caused funds of clients to be deposited in bank accounts maintained without the State of Ohio in which were funds belonging to Respondent and in that Respondent converted to his own use trust funds belonging to his clients."

APPENDIX C-2

INTERROGATORIES

Come now Respondent and requests Relator to answer the following Interrogatories, in writing and under oath, within 28 days of the date of service.

1. State with particularity each time and place in which you claim the respondent was guilty of intemperate and undignified conduct in evidencing disrespect for the legal system, and state the exact fact or facts upon which you rely, to support said charge.

2. State the exact time and the identity of the acting and qualified Judges to whom you claim the Respondent was intemperate and undignified and disrespectful and state with particularity the act or acts which you claim support this charge.

3. In charge #2 you claim willful breach of Canon 1, Disciplinary Rule 1-102 Misconduct (A)(5) by the Respondent under circumstances that he engaged in conduct that is prejudicial to the administration of justice. State exactly and in what manner you claim the Respondent violated this provision of Canon 1, and the act or acts that you claim he did which violated this Canon.

4. State with particularity the agreements that you claim the Respondent entered into in which he charged or collected "clearly excessive fees for legal services rendered," and state the amount which you claim was the correct fee for the services rendered and the facts upon which you base this claim.

5. In answering the preceding interrogatory, state exactly and in detail what investigation, research, or interviews of individuals you have made to establish this charge, and give the names and addresses of each person interviewed.

6. State exactly the facts upon which you base Charge #4 that the Respondent withdrew from employment without taking reasonable steps to avoid foreseeable prejudice to the rights of his client, and give the name of each client whom you claim was affected by such withdrawal.

7. State when and where you claim the Respondent breached Canon Rule 7-106 (C) (6), and state in detail the undignified and discourteous conduct which you claim the Respondent was guilty of, and in what manner you claim the same discredited the tribunal, and further state the name of the tribunal or tribunals before whom this Respondent so behaved.

8. Do you claim in Charge #6 that this Respondent converted money of his clients to his own use?

9. If your answer to the above interrogatory is in the affirmative, state the names of the clients and the amount of money which you claim was converted.

10. Further, in amplification of Charge #6, state whether you claim a deposit in trust funds in a bank out of the State of Ohio had some improper or ulterior motive.

11. If your answer to Interrogatory #10 is in the affirmative, state the evidence upon which you rely to establish this fact.

PROOF OF SERVICE

I hereby certify that a copy of the foregoing Interrogatories has been served upon Richard G. Snell, Counsel for Relator, at 2260 Winters Bank Building, Dayton, Ohio 45402, by mailing same to him by regular U.S. Mail, postage prepaid, this 5 day of June, 1973.

DAN D. WEINER
Attorney for Respondent

APPENDIX C-3

CANONS INVOLVED

DR 1-102 Misconduct.
(A) A lawyer shall not:
(1) Violate a Disciplinary Rule.
(2) Circumvent a Disciplinary Rule through actions of another.
(3) Engage in illegal conduct involving moral turpitude.
(4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation of justice.
(6) Engage in any other conduct that adversely reflects on his fitness to practice law.

DR 2-106 Fees for Legal Services.
(A) A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee.
(B) A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee. Factors to be considered as guides in determining the reasonableness of a fee include the following:
(1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly.
(2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.
(3) The fee customarily charged in the locality for similar legal services.
(4) The amount involved and the results obtained.
(5) The time limitations imposed by the client or by the circumstances.
(6) The nature and length of the professional relationship with the client.
(7) The experience, reputation, and ability of the lawyer or lawyers performing the services.
(8) Whether the fee is fixed or contingent. (C) A lawyer shall not enter into an arrangement for, charge, or collect a contingent fee for representing a defendant in a criminal case.

DR 2-110 Withdrawal from Employment.
(A) In general.
(1) If permission for withdrawal from employment is required by the rules of a tribunal, a lawyer shall not withdraw

from employment in a proceeding before that tribunal without its permission.

(2) In any event, a lawyer shall not withdraw from employment until he has taken reasonable steps to avoid foreseeable prejudice to the rights of his client, including giving due notice to his client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules.

(3) A lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned.

(B) Mandatory withdrawal.

A lawyer representing a client before a tribunal, with its permission if required by its rules, shall withdraw from employment, and a lawyer representing a client in other matters shall withdraw from employment, if:

(1) He knows or it is obvious that his client is bringing the legal action, conducting the defense, or asserting a position in the litigation, or is otherwise having steps taken for him, merely for the purpose of harassing or maliciously injuring any person.

(2) He knows or it is obvious that his continued employment will result in violation of a Disciplinary Rule.

(3) His mental or physical condition renders it unreasonably difficult for him to carry out the employment effectively.

(4) He is discharged by his client.

(C) Permissive withdrawal.

If DR 2-110 (B) is not applicable, a lawyer may not request permission to withdraw in matters pending before a tribunal, and may not withdraw in other matters, unless such request or such withdrawal is because:

(1) His client:

(a) Insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law.

(b) Personally seeks to pursue an illegal course of conduct.

(c) Insists that the lawyer pursue a course of conduct that is illegal or that is prohibited under the Disciplinary Rules.

(d) By other conduct renders it unreasonably difficult for the lawyer to carry out his employment effectively.

(e) Insists, in a matter not pending before a tribunal, that the lawyer engage in conduct that is contrary to the judgment and advice of the lawyer but not prohibited under the Disciplinary Rules.

(f) Deliberately disregards an agreement or obligation to the lawyer as to expenses or fees.

(2) His continued employment is likely to result in a violation of a Disciplinary Rule.

(3) His inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal.

(4) His mental or physical condition renders it difficult for him to carry out the employment effectively.

(5) His client knowingly and freely assents to termination of his employment.

(6) He believes in good faith, in a proceeding pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal.

DR 9-102 Preserving Identity of Funds and Property of a Client.

(A) All funds of clients paid to a lawyer or law firm, other than advances for costs and expenses, shall be deposited in one or more identifiable bank accounts maintained in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:

(1) Funds reasonably sufficient to pay bank charges may be deposited therein.

(2) Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

(B) A lawyer shall:

(1) Promptly notify a client of the receipt of his funds, securities, or other properties.

(2) Identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable.

(3) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them.

(4) Promptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive.

APPENDIX D

RULE V.
DISCIPLINARY PROCEDURE.

Pursuant to the powers of this Court over the Bar of this State and the members thereof, this rule is amended, as follows, effective on March 11, 1964, and shall apply to all pending cases.

(1) Creation of Board of Commissioners on Grievances and Discipline. There is hereby created as Commissioners of this Court a Board of Commissioners on Grievances and Discipline. Said Board of Commissioners shall consist of seventeen (17) members of the Bar of this Court, appointed by this Court. One member of such Board shall be appointed by this Court. One member os such Board shall be appointed from each of the following districts: District 1, comprising Butler, Clermont, Clinton, Hamilton and Warren Counties. District 2, comprising Darke, Miami, Montgomery, Preble and Shelby Counties. District 3, comprising Defiance, Fulton, Hancock, Henry, Paulding, Putnam, Van Wert, Williams and Wood Counties. District 4, comprising Lucas County. District t, comprising Crawford, Delaware, Marion, Morrow, Ottawa, Sandusky, Seneca and Wyandot Counties. District 6, comprising Champaign, Clark, Fayette, Greene, Logan, Madison and Union Counties. District 7, comprising Franklin County. District 8, comprising Adams, Brown, Gallia, Highland, Jackson, Lawrence, Pickaway, Pike, Ross, Scioto and Vinton Counties. District 9, comprising Coshocton, Fairfield, Knox, Licking, Muskingum and Perry Counties. District 10, comprising Ashland, Erie, Holmes, Huron, Lorain, Medina, Richland and Wayne Counties. District 12, comprising Cuyahoga County. District 13, comprising Ashtabula, Columbiana, Geauga, Lake, Mahoning and Trumbull Counties. District 14, comprising Carroll, Stark and Tuscarawas Counties. District 15, comprising Belmont, Guernsey, Harrison, Jefferson and Monroe Counties. District 16, comprising Allen, Auglaize, Hardin and Mercer Counties. District 17, comprising Athens, Hocking, Meigs, Morgan, Noble and Washington Counties. The term of office of each member of said Board of Commissioners shall be three (3) years, beginning on January 1 next following his appointment.

Provided, however, that any member of the Board whose term has expired and who shall have an uncompleted assignment as a member of a panel shall continue to serve for the purpose of such assignment until it shall have been concluded before the Board of Commissioners, and further provided that his successor commissioner shall take no part in the proceedings of the Board concerning such assignment. Appointments to terms commencing January 1 of any year shall be made prior to December 1 of the preceding year. Vacancies for any cause shall be forthwith filled by appointment by this Court for the unexpired term. The Court shall each year designate one member as Chairman of said Board of Commissioners and designate a Secretary, each of whom shall have authority to execute journal entries on behalf of the Board of Commissioners and of panels thereof.

(2) Jurisdiction of Board. The Board of Commissioners is empowered and charged to receive, entertain, inquire into, take evidence, preserve the record, make findings and submit recommendations to this Court as hereinafter provided:

(a) concerning complaints of misconduct as hereinafter defined which are alleged to have been committed by an attorney and counselor at law, person under suspension for an indefinte period from the practice of law, or judge, or

(b) concerning the mental illness of any attorney and counselor at law or judge, or

(c) relating to petitions for reinstatement as an attorney and counselor at law in this State, or

(d) upon reference by this Court of conduct affecting any proceeding under this rule, where the acts allegedly constitute a contempt of this Court or a breach of these rules but did not take place in the presence of the court or a member thereof, whether by willful disobedience of any order or judgment of this Court or the Board of Commissioners, by interference with any officer of this Court in the prosecution of any duty, or otherwise; provided that nothing herein shall be construed as limiting or affecting the plenary power of this Court to impose punishment with reference either to contempts or breaches of these rules committed in its presence or the plenary power of any other court with reference to contempts committed in its presence.

(3) Referral for Investigation. The Board of Commissioners may refer to the Grievance Committee of the appropriate local bar association or to the Committee on Legal Ethics and Professional Conduct of the Ohio State Bar Association any matters coming to its attention for investigation, as hereinafter provided.

(4) Application of Rule; Authority and Duty of Local Committees. From and after the effective date of this rule, all proceedings with regard to mental illness and complaints and grievances involving alleged misconduct by attorneys and counselors at law and judges; all proceedings for the discipline of such attorneys and counselors at law, persons under suspension for an indefinite period or disbarred from the practice of law, and judges; and all proceedings for reinstatement as an attorney and counselor at law shall be brought, conducted and disposed of in accordance with the provisions of this rule. Any committee authorized by any regularly organized bar association or by the Ohio State Bar Association shall investigate any matter referred to it or which comes to its attention, and may cause a complaint to be filed pursuant to this rule in cases where misconduct, contempt, or mental illness is found; provided, however, that nothing herein shall affect disciplinary procedures of any regularly organized bar association under the provisions of its constitution not inconsistent with this rule.

The Board of Commissioners or any member thereof, the Chairman of the Committee on Legal Ethics and Professional Conduct of the Ohio State Bar Association, and the President, Secretary or Chairman of the Grievance Committee of any regularly organized local bar association in the State may call upon any attorney and counselor at law or judge in the State to assist in any investigation or to testify in any hearing before the Board of Commissioners or any panel for which he would not be bound to claim privilege as an attorney at law. No such attorney and counselor at law or judge shall neglect or refuse so to assist in any such investigation or so to testify.

In the event that a Grievance Committee of a local bar association or the Committee on Legal Ethics and Professional Conduct of the Ohio State Bar Association shall in the case of a disciplinary investigation as provided for in this rule seek determination of a procedural question, the principal officer of a local bar association or the Chairman of its Grievance

Committee or the Chairman of the appropriate state bar association committee shall direct a written inquiry to the Chairman of the Board of Commissioners by filing it with the secretary of the Board. Upon receipt of such written request, the Chairman of the Board of Commissioners may refer the inquiry to a panel of three members of the Board. The written request shall be documented with such facts, citations, statutory references and other written data that may be of assistance to make a determination of the matter presented. After the panel has completed its study of the problem presented, the panel shall make a written recommendation as to solution of the question. Upon receipt of such report and recommendation, the Chairman of the Board of Commissioners shall promptly convene the members of the Board who shall approve, reject, modify or otherwise dispose of the panel's recommendation. In the event that the question presented requires immediate attention for decision, the Chairman of the Board has the discretionary power to waive reference of the question to a panel, but shall submit the question or questions presented to the entire Board for its decision. (Effective February 15, 1971.)

(5) Definitions.

(a) Misconduct. Misconduct shall mean any violation of any provision of the oath of office taken upon admission to the practice of law in this State, or any violation of the Code of Professional Responsibility or the Canons of Judicial Ethics as adopted by the Court from time to time, disobedience of these rules or of the terms of an order imposing a suspension for an indefinite period from the practice of law, or the commission or conviction of a crime involving moral turpitude.

(b) Mental Illness. Mental illness shall mean the condition defined in R. C. 5122.01 (A).

(6) Manner of Discipline. Each attorney and counselor at law or judge found guilty of misconduct shall be disciplined. The discipline of such persons shall be

(a) a permanent disbarment from the practice of law, or,

(b) suspension for an indefinite period from the practice of law subject only to reinstatement as hereinafter provided, or,

(c) a public reprimand, or

(d) a private reprimand.

(7) Effect of Discipline. A person disbarred or a person who has voluntarily surrendered his license to practice shall never thereafter be readmitted to the practice of law in this State. A person who has been suspended for an indefinite period from the practice of law and thereafter reinstated in the manner hereinafter provided shall be disbarred upon being found guilty of subsequent misconduct. A person who has been publicly reprimanded for misconduct, upon being found guilty of subsequent misconduct, shall be suspended for an indefinite period from the practice of law or permanently disbarred, depending upon the seriousness of such misconduct.

(8) The Complaint; Where Filed; By Whom Signed. A complaint shall mean a formal written complaint alleging misconduct or mental illness of one who shall be designated as the Respondent. Six (6) copies of all such complaints shall be filed in the office of the Secretary of the Board. Such complaint shall not be accepted for filing unless it is signed by one or more members of the Bar of Ohio in good standing (who shall be counsel for the Relator) and supported by a certificate in writing signed either by the Chairman of the Committee on Legal Ethics and Professional Conduct of the Ohio State Bar Association or by the President, Secretary, or Chairman of the Grievance Committee of any regularly organized local bar association in the State (which association shall be deemed the Relator), certifying that said counsel are duly authorized to represent said Relator in the premises and have accepted the responsibility of prosecuting the complaint to conclusion. Such certification shall constitute a representation that, after investigation, the Relator believes reasonable cause exists to warrant a hearing on such complaint, and shall constitute the authorization of such counsel to represent said Relator in the premises as fully and completely as if designated and appointed by order of the Supreme Court of Ohio with all the privileges and immunities of an officer of such Court. The complaint may also, but need not, be signed by the person aggrieved.

(9) Duty of the Board Upon Filing of the Complaint.

(a) Notice to Respondent. The Secretary of the Board of Commissioners shall send a copy of the complaint by registered mail to the Respondent with a notice requiring him to file, within twenty (20) days after the mailing of

such notice, six (6) copies of his answer and to serve copies thereof upon counsel of record named in the complaint.

(b) Suspension of Right to Practice Pending Disposition of Misconduct Complaint. After an answer has been filed or the time for answer has elapsed, the Court shall entertain such recommendation as the Board may make for the immediate suspension from the practice of law pending disposition of the complaint if the complaint alleges the conviction of a crime involving moral turpitude supported by a certified copy of the judgment entry of the Court convicting the Respondent.

(c) Mental Illness Suspension. After an answer has been filed or the time for answer has elapsed, if the complaint or answer alleges mental illness supported by a certified copy of a journal entry of a court of competent jurisdiction adjudicating mental illness, or if the Board finds existing mental illness after an examination provided in (d) hereof, the Board shall forthwith certify the complaint in this Court and the Court may suspend the Respondent from the practice of law.

(d) Examination. If the complaint or answer alleges existing mental illness unsupported by a journal entry of a court of competent jurisdiction or mental illness is otherwise placed in issue, the Board or panel may, on its own motion or on motion by either party, order a medical or psychiatric examination of Respondent by one or more physicians, designated by the Board or panel, whose findings shall be presented to the Board or panel as evidence and made available to both parties.

(e) Termination. Any suspension under this section may be terminated on Respondent's application to the Board and a showing of removal of the cause for the suspension, which is certified by the Board to, and affirmed by, the Court.

(10) Hearing by Panel of Three Commissioners. After Respondent's answer has been filed, or the time ahs expired within which Respondent was required to file such answer, a formal hearing shall be held, upon reasonable notice, by a panel of Commissioners appointed by the Chairman of said Board of Commissioners, who shall designate one member of such panel as chairman of the panel. Such panel shall consist

of three (3) Commissioners, no one of whom shall be a resident of the district from which such complaint originated. A majority of such panel shall constitute a quorum for all purposes.

The Chairman of the panel may have a transcript prepared of the testimony taken at each such formal hearing, and the cost thereof shall be paid by the Secretary of the Board of Commissioners, or taxed as costs.

(11) Authority of Panel; Dismissal or Private Reprimand. If the panel finds that the complaint or evidence is insufficient to base a charge of misconduct or that the complaint or evidence supports a charge of misconduct for which a private reprimand should be administered, the panel may order that the complaint be dismissed or administer such private reprimand at the time of the hearing. Such action shall be reported to the Secretary of the Board of Commissioners who shall give written notice of the action taken to the Board of Commissioners, the Respondent, all counsel of record, the Ohio State Bar Association, and the local bar association or associations of the county in which the Respondent resides and maintains his office and the county from which the complaint arose.

If a written request for a conference with the Supreme Court of Ohio is made by the Relator within twenty (20) days after the issuance of such noice, Relator, Respondent and a member of the hearing panel will be called to confer with the Court.

(12) Referral by Panel. In the alternative, if the panel determines that findings of fact and recommendations for dismissal or private reprimand should be referred to the Board of Commissioners for review and action by the full Board, the panel may submit its findings of fact to the Board of Commissioners and may recommend dismissal or private reprimand in the same manner as provided in the following sections of this Rule V with respect to public reprimand, suspension or disbarment.

(13) Public Reprimand; Suspension or Permanent Disbarment; Duty of Panel. If the panel finds and determines that the Respondent is guilty of misconduct and that public reprimand, suspension for an indefinite period, or permanent disbarment is merited, the panel shall make its certified report of the proceedings before it, including its findings of fact and

recommendations, and shall file the same, together with the transcript of testimony taken and an itemized statement of the actual and necessary expenses incurred in connection with such proceedings, with the Secretary of the Board of Commissioners.

(14) Review by Entire Board of Commissioners; Board to Administer Private Reprimand. Upon review, said Board of Commissioners may refer the matter back to the panel for further hearing or may order a further hearing to be presented before said Board of Commissioners or may proceed upon the certified report of the prior proceedings before the panel. Upon the final review, the Board of Commissioners may dismiss the complaint or find that the Respondent is guilty of misconduct. If the Board of Commissioners determines that a private reprimand shall be administered, it shall administer such private reprimand. If the complaint is dismissed, or a private reprimand is administered, such action shall be reported to the Secretary of the Board of Commissioners, who shall notify the same persons and organizations that would have received notice if the complaint had been dismissed by the panel that heard the matter.

(15) Public Reprimand; Suspension or Permanent Disbarment; Duty of Board after Review. If the Board of Commissioners determines that a public reprimand, suspension for an indefinite period from the practice of law or permanent disbarment is merited, said Board of Commissioners shall thereupon make a final certified report of such proceedings, including its findings of fact and recommendations, and shall file the same, together with the transcript of testimony taken and an itemized statement of the actual and necessary expenses incurred in connection with such proceedings, in the office of the Clerk of this Court, and shall forthwith notify the Respondent and all counsel of record of such aciton, enclosing with such notice a copy of the findings of fact and recommendations and a copy of the statement of the actual and necessary expenses incurred.

(16) Show Cause Order Issued by the Court to Respondent. On the filing of such final report of the Board of Commissioners, this Court shall issue to the Respondent an order to show cause why the report of said Board of Commissioners shall not be confirmed and a disciplinary order entered. Notice of the order to show cause shall be served by

the Clerk of this Court on the Respondent and all counsel of record, personally or be registered mail.

(17) Response to Order to Show Cause and Objections. The Respondent or Relator within twenty (20) days after the issuance of an order to show cause may file objections to the findings or recommendations of the Board of Commissioners and to the entry of a disciplinary order or to the confirmation of the report on which the order to show cause was issued, and a brief in support of such objections, together with proof of service of copies thereof on the Secretary of the Board of Commissioners and on all counsel of record. All objections and briefs shall be filed in the number and form required by rules of this Court for original actions.

(18) Answer Briefs. Answer briefs together with proof of service shall be filed within fifteen (15) days after briefs in support of objections have been filed. All briefs shall be filed in the number and form required by rules of this Court for original actions.

(19) Review by Court; Reimbursement for Expenses of Board; Duty of Clerk on Entering Order. After hearing on objection, or, if objections are not filed within the prescribed time, this Court shall enter such order as it may find proper, which may include provision for reimbursement of costs and expenses incurred by the Board of Commissioners. Upon the entry of any disciplinary order pursuant to this rule, the Clerk of the Court shall mail certified copies thereof to counsel of record, to the Board of Commissioners, to Respondent (at his last known address), to the Ohio State Bar Association, to the local bar association or associations in the county or counties in which the Respondent resides and maintains his office and the county or counties from which the complaint originated, to the Presiding Judge of the Court of Common Pleas for such county or counties, and to the Presiding Judge of the United States District Courts in Ohio, the United States Court of Appeals for the Sixth Circuit; and to the Supreme Court of the United States.

If a disciplinary order of the Court provides for a public reprimand, the Clerk of this Court shall arrange for publication thereof in the Ohio Bar publication of the Ohio State Bar Association and in a publication, if any, of the Relator local bar association.

If a disciplinary order of the Court provides for a

permanent disbarment or suspension for an indefinite period from the practice of law, the Clerk of this Court shall arrange for publication thereof in the official reports of this Court, in the Ohio Bar publication of the Ohio State Bar Association and in a publication, if any, of the Relator local bar association.

(20) Proceedings Private; Exceptions. All proceedings and documents relating to complaints and hearings theron and proceedings in connection therewith shall be private except:

(a) Where the Respondent shall request in writing that they be public or

(b) Where proceedings filed with the Supreme Court of Ohio recommend the discipline of permanent disbarment or suspension for an indefinite period, or

(c) Where any disciplinary matter is heard by the Supreme Court of Ohio, other than in conference, on objections to the findings or recommendations of the Board of Commissioners.

(A copy of the findings, recommendations and actions of the Panel and the Board of Commissioners in each case shall be given to any member of the Court upon request.)

(21) Petition for Reinstatement. No petition for reinstatement to the practice of law shall be entertained by this Court and the same may not be filed in this Court, within a period of two (2) years after the entry of an order suspending for an indefinite period, the Petitioner from the practice of law in this State or within a period of two (2) years after the denial of a petition for reinstatement to the practice of law filed by such Petitioner.

(22) Contents of Petition for Reinstatement. Subject to the foregoing restrictions, any person who has been suspended for an indefinite period from the practice of law and who wishes to be reinstated may file his verified petition and twenty (20) copies thereof with the Clerk of this Court, setting forth

(a) the date when such suspension was ordered, and if there was a reported opinion, the volume and page of the official reports of this Court where such opinion appears;

(b) the dates all such prior petitions for reinstatement were filed, denied or granted;

(c) the names of all persons and organizations, except the Petitioner and the Board of Commissioners, who

were, or would be, entitled, under this Rule, to receive from the Clerk of this Court certified copies of the disciplinary order of this Court against Petitioner resulting in his suspension; and the name of the local bar association or associations in the County in which he resides at the time of the filing of the Petition and of each County in which he proposes to maintain an office if reinstated; and

(d) the facts upon which he relies to establish by clear and convincing evidence that he possesses all the qualifications, mental, educational and moral, which would have been a requirement of an applicant for admission to the Bar of Ohio at the time of his original admission, and that he is now a proper person to be readmitted to the Bar of Ohio, notwithstanding the previous disciplinary action taken against him.

(23) Costs to be Deposited with Petition for Reinstatement. Such petition shall be accompanied by a deposit in an amount to be fixed by the Clerk, for probable costs and expenses to be incurred in connection with said proceedings, which shall include any amounts unpaid under any prior order of this Court.

(24) Requisites for Reinstatement. No person shall be reinstated unless he has established by clear and convincing evidence that he possesses all of the qualifications, mental, educational and moral, which would have been a requirement of an applicant for admission to the Bar of Ohio at the time of his original admission, and that he is now a proper person to be readmitted to the Bar of Ohio, notwithstanding the previous disciplinary action taken against the Petitioner. In such case, the order of reinstatement may be conditioned upon the Petitioner's subsequently taking and passing a regular bar examination of this Court and thereafter taking the prescribed oath of office.

Paragraphs C and D of Seciton 6 of Rule I of the Supreme Court Rules for the Government of the Bar of Ohio shall not apply to any petitioner with respect to whom such an order of reinstatement may have been issued.

(25) Petition for Reinstatement Referred to Board of Commissioners. Unless denied forthwith for insufficiency in form or substance, the Clerk shall forward five (5) copies of the petition to the Secretary of the Board of Commissioners

and such petition shall be deemed to be referred, without court order, to the Board of Commissioners to hold a hearing or hearings, and take and report evidence relevant to the rehabilitation of the Petitioner and his possession of all the qualifications, mental, educational and moral, required of an applicant for admission to the Bar of Ohio at the time of his original admission.

(26) Hearing of Petition by Panel of Three; Hearing Shall Be Public; Who May Appear; Appeal to Court From Denial of Petition by Board of Commissioners. The Chairman of the Board of Commissioners shall appoint a hearing panel of three (3) Commissioners no one of whom shall be a resident of the district in which the Petitioner resides or of the district in which he resided at the time of his suspension and said panel shall conduct a hearing or hearings upon such petition. Reasonable notice of any hearing shall be given to the Petitioner or his counsel and to all persons or organizations referred to in Section (22) (c). Such hearing shall be public. Any interested person, any member of the Bar, and any representative of any local bar association or of the Ohio State Bar Association may appear before the hearing panel in support of or in opposition to the petition.

The hearing panel shall make and certify a report of the proceedings before it, including its findings of fact and recommendations, to the Board of Commissioners; and all proceedings before such panel and the Board of Commissioners shall, whenever appropriate, be governed by the provisions hereinbefore contained governing disciplinary proceedings, including proceedings in this Court or an issuance of an order to show cause why the final report of the Board of Commissioners should not be confirmed.

The Board, in its discretion, may recommend that the Petitioner be required to take and pass one of the regular bar examinations as a condition to readmission. If the final report should recommend denial of the petition, the Petitioner shall have ten (10) days from receipt of notice of the date of filing such report to file objections thereto and brief in support thereof.

If the final report should recommend granting of the petition, any person or organization referred to in Section (22) (c) shall have ten (10) days from the receipt of notice of filing of such report to file objections to the recommendations and

brief in support thereof. The Court shall thereupon enter an appropriate order, which may include such provisions for reimbursement of the costs and expenses incurred in connection with the proceedings as the Court shall deem just.

(27) Manner of Service of Notices, etc. Whenever provision is made for the service of any notice, order, report or other paper or copy thereof upon any Respondent or Petitioner in connection with any proceeding involving a complaint or a petition for reinstatement, service may be made upon counsel of record for such Respondent or Petitioner, either personally or by registered mail.

(28) Quorum of Panel or Board. A majority of the members of the Board of Commissioners or of a hearing panel shall constitute a quorum for all purposes and the action of a majority of those present comprising such quorum shall be the action of the Board of Commissioners or of such hearing panel.

(29) Clerk is Agent for Service of Notices on Nonresident Attorney. Any nonresident of this State, having been admitted as an attorney and counselor at law by the rules of this Court, or any resident of this State, having been admitted as an attorney and counselor at law by the rules of this Court, who subsequently becomes a nonresident or conceals his whereabouts, by such admission to the practice of law within this State, makes the Clerk of this Court his agent for the service of any notice provided for in any proceeding instituted before the Board of Commissioners against such attorney and counselor at law or judge, pursuant to this Rule.

(30) Manner of Service on Clerk; Record of Such Service Not a Public Record. All such notices shall be served by the Secretary of the Board of Commissioners upon the Clerk of this Court by leaving at the office of said Clerk a true and attested copy of such notice and any accompanying document and by sending to the Respondent, by registered mail, postage prepaid, return receipt requested, a like, true and attested copy, with an endorsement thereon of the service, upon said Clerk of this Court, addressed to such Respondent at his last known address. The postmaster's receipt for the payment of such registered postage shall be attached to and made a part of the return of service of such notice by the Secretary. The panel or Board of Commissioners or Court before which there is pending any proceeding in which notice has been given as

provided in this section may order such continuance as is necessary to afford the Respondent reasonable opportunity to appear and defend. The Clerk of the Court shall keep a record of the day and hour of service upon him of such notice and any accompanying document, which shall not be a public record in the office of said Clerk.

(31) Power to Issue Subpoenas. In investigations and proceedings under this rule, upon application by the Chairman, Vice Chairman, Secretary, or Counsel of the Committee of Legal Ethics and Professional Conduct of the Ohio State Bar Association, or by the President, Secretary or Chairman of the Grievance Committee of any regularly organized local bar association in the state authorized to sign a certificate under Section (8) hereof, or by the Respondent or Relator, each member of the Board of Commissioners and its Secretary shall have power to issue subpoenas and to cause testimony to be taken under oath before the Committee on Legal Ethics and Professional Conduct of the Ohio State Bar Association, or any subcommittee thereof, or before the Grievance Committee of any regularly organized local bar association in the State, or before a hearing panel of the Board of Commissioners. All such subpoenas shall be issued in the name and under the seal of this Court and shall be signed by a member of the Board of Commissioners or its Secretary and served as provided by statute.

(32) May Order Depositions. The Secretary of the Board of Commissioners may order testimony of a witness to be taken by deposition within or without this State in the manner prescribed for the taking of depositions in civil actions, and such depositions may be used to the same extent as permitted in civil actions.

(33) Effect of Refusal to Testify. The refusal or neglect of the person subpoenaed as a witness to obey a subpoena, to attend to be sworn or to affirm, or to answer any proper question shall be deemed to be contempt of the Court and shall be punishable accordingly.

(34) Rules of Evidence. All rules of evidence shall be observed in the conduct of all hearings, and the Respondent may be represented by counsel, who shall enter formal appearance.

(35) Docket of Complaints. The Secretary of the Board of Commissioners shall keep a docket of each complaint and

of all proceedings thereon, which shall be retained permanently as a part of the records of his office.

(36) Board May Prescribe Rules. The Board of Commissioners may, subject to the prior approval of this Court, adopt other rules and regulations not inconsistent herewith.

(37) Rule to be Liberally Construed. The process and procedure under this Rule and other regulations approved by this Court shall be as summary as reasonably may be. Amendments to any complaint, notice, answer, objections, report or order to show cause may be made at any time prior to final order of the Court. The party affected by such amendment shall be given reasonable opportunity to meet any new matter presented thereby. No investigation or procedure shall be held to be invalid by reason of any nonprejudicial irregularity or for any error not resulting in a miscarriage of justice. This Rule and such regulation relating to investigations and proceedings involving complaints of misconduct and petitions for reinstatement shall be liberally construed for the protection of the public, the Courts and the legal profession and shall apply to all pending investigations and complaints so far as may be practicable, and to all future investigations, complaints and petitions whether the conduct involved occurred prior or subsequent to the amendment of this Rule. To the extent that application of this amended Rule to such pending proceedings may not be practicable, the rules and regulations in force at the time this amended Rule became effective shall continue to apply.

APPENDIX E

RULES

Pursuant to the provisions of Section 36 of Rule V of the Supreme Court Rules for the Government of the Bar of Ohio, the Board of Commissioners on Grievances and Discipline adopts the following rules:

(1) Within the period of time permitted for an answer to the complaint, Respondent may file a motion or demurrer supported by brief and affidavits if appropriate. A brief and affidavits if appropriate in opposition to such motion or demurrer may be filed within twenty days after filing of such motion or demurrer. No oral hearing will be granted, and rulings will be made by the Chairman of the Board or any member designated by the Secretary of the Board, which ruling shall be the ruling of the Board. No motion or demurrer to the complaint shall be considered unless made in accordance with this rule.

(2) Motions of either party subsequent to the appointment of a panel shall be ruled upon by the Chairman of the panel, or a member thereof.

(3) For good cause shown, the Chairman of the Board, or, subsequent to the appointment of a panel, the Chairman of the panel or a member thereof, may grant extensions of time for the filing of any pleading, motion, brief or affidavit, either before or after the time permitted for filing.

(4) Depositions taken pursuant to Section 32 of Gov. R. V shall be filed with the Secretary of the Board in thy manner and within the time required by Civ. R. 27; 28; 30; 32.

(5) The complaint shall allege the specific misconduct detailed in Section 5(a) of Gov. R. V or Gov. R. IV (including the particular canon of professional or judicial ethics where appropriate) alleged to have been violated by the Respondent. The panel and Board shall not be limited by such specification.

(6) Proof of service shall be required with any pleading subsequent to the complaint, motion, brief, or affidavit.

APPENDIX F

PRE-HEARING INSTRUCTIONS

For the purpose of facilitating disciplinary procedures under Gov. R. V, the Board of Commissioners on Grievances and Discipline has adopted these pre-hearing instructions. These instructions are advisory only, but the Board suggests that counsel for each party review them carefully and wherever possible to comply with the suggestions herein contained. Copies have been mailed to each interested party to this proceeding.

(1) Disciplinary Procedure in Ohio is governed by the provisions of Rule V of the Supreme Court Rules for the Government of the Bar of Ohio. It is suggested that counsel familiarize themselves with this Rule and with the provisions of Rule IV governing professional conduct.

A helpful reference is "Lawyer Discipline - The Ohio Story", written by Professor Oliver Schroeder, Jr., and published by the Ohio Legal Center Institute.

(2) Attached is a form of Opening Statement generally used by panels with some variations to fit the particular case. Your attention is especially called to the desirability of entering into stipulations of fact wherever possible and any stipulations concerning authenticity of documents, the substitution of copies for originals, etc. We require that counsel for the parties confer sufficiently in advance of the hearing date to reach agreement on stipulation wherever possible, in order that the hearing may be expedited. Upon timely request of either party or the panel, the Chairman of the panel may conduct a pre-trial conference.

(3) Section 34 of Gov. R. V provides that all rules of evidence shall be observed in the conduct of all hearings. The panel is, of course, composed of attorneys and technical objections to the form of questions should be avoided, if possible.

(4) Section 2 of Gov. R. V requires the Board to "inquire into. . .complaints of misconduct. . . .". You may anticipate, therefore, that the panel members may question witnesses or may require either Relator or Respondent to produce witnesses or documents for their consideration.

(5) Since proceedings are private under Gov. R. V except upon petition for reinstatement or upon Respondent's request, the Board requires that Relator make arrangements for a bailiff or sergeant-at-arms for the panel in order to assure privacy. Relator shall also arrange for the services of a court reporter.

(6) Counsel for each party may be asked at the conclusion of the hearing for their recommendation of appropriate discipline in the event the Board makes a finding of misconduct. In the instance of a petition for reinstatement, counsel for all parties entitled to notice under Section 22(C) of Gov. R. V will be asked for recommendations. Counsel should be prepared to make such recommendations.

(7) In cases wherein a conviction of a crime involving moral turpitude is alleged, the Board will inquire into any matter relevant to the appropriate degree of discipline, including, but not limited to, the facts with respect to the crime for which Respondent was convicted.

(8) At the conclusion of the hearing, the transcript will be filed with the Secretary of the Board and notice therof given by the Secretary of the Board to each party. Copies may be ordered by any party at the expense of the party requesting the same. Arrangements for obtaining copies of a portion of the transcript may be made with the Secretary of the Board at the expense of the party requesting the same.

(9) Six copies of briefs with proof of service will be filed within twenty (20) days after filing of the transcript. Seven (7) days after the due date of briefs, reply briefs are due. For good cause, extensions of time for briefs may be granted by the Chairman or any panel member.

APPENDIX G-1

May 21, 1973

Fred M. Ezenson
Attorney at Law
1100 Gem City Savings Bldg.
Dayton, Ohio 45402

and

RICHARD G. SNELL
Attorney at Law
2260 Winters Bank Bldg.
Dayton, Ohio 45402

Re: Complaint No. 181 - Dan D. Weiner
Board of Commissioners on Grievances
and Discipline of the Supreme Court
of Ohio

Dear Fred and Dick:

Please be advised that I am in receipt of complaint number 181 filed May 3rd, 1973 by the two of you setting forth six alleged charges against me constituting misconduct.

In conversing with Judge Radcliff, I understand that there are no procedural rules established permitting the filing of a motion requesting a Bill of Particulars as to each specific paragraph set forth, however, he suggested that I write the attorneys representing the Dayton Bar Association and request that I be furnished with a complete breakdown of the charges as they pertain to each specific allegation.

I would appreciate your furnishing me the requested information as early as possible so that I will be in a position to know the specific charges made against me and then be in a position to adequately answer them at the time of the hearing. I would also appreciate your acknowledging my letter and advising me by return letter as to when I might receive the requested information.

I also indicated to Judge Radcliff that the attorney that I comtemplate contacting relative to representation of me in this matter is out of the state until the middle of June and am enclosing herewith, a copy of a motion requesting an extension until June 30th to file an answer to the subject complaint.

Thanking you for your cooperation and courtesies extended herein, I remain

Most sincerely yours,

Dan D. Weiner

Encl:
CC: Judge William Radcliff
DDW/ms

APPENDIX G-2

May 30, 1973

Mr. Dan D. Weiner
Attorney at Law
Suite 301
25 South Main Bldg.
Dayton, Ohio 45402

Re: Complaint No. 181; Dan D. Weiner; Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio

Dear Dan:

Fred Izenson and I discussed your letter of May 21, wherein, you requested a complete breakdown of the charges against you as they pertained to each specific allegation.

Both Fred and I believe that we should not furnish this information to you for two reasons. First of all, you have been furnished with copies of all written complaints filed against you in the past by the Dayton Bar Association, you have been kept informed of the investigations by the Dayton Bar as they proceeded, and you have met with the ethics committee of the Dayton Bar Association concerning these charges and discussed the complaints with the members of the committee.

In addition, since there are no procedural rules established concerning a Bill of Particulars, we would not wish to limit the scope of our prosecution in any way by narrowing or delineating the charges further at this time. Both Fred and I will be glad to discuss the charges with your attorney at any time.

Very truly yours,

Iddings, Jeffrey & Donnelly

By
Richard G. Snell

RGS/pls
cc: Judge William Radcliff
Fred M. Izenson

APPENDIX G-3

June 5, 1973

Richard G. Snell
Attorney at Law
2260 Winters Bank Building
Dayton, Ohio 45402

Re: Dan D. Weiner, Respondent - Dayton
Bar Association, Relator
Case No. 181

Dear Dick:

Enclosed herewith, is the original copies of the Interrogatories which I would appreciate your answering relative to the above subject case.

Thanking you for your cooperation and courtesies extended in this matter, I remain

Most sincerely yours,

Dan D. Weiner

Encl:
DDW/ms

APPENDIX G-4

June 18, 1973

Mr. Dan D. Weiner
Attorney at Law
Suite 301
25 South Main Building
Dayton, Ohio 45402

Re: Complaint against Dan D. Weiner, Respondent;
Dayton Bar Association, Relator; Case No. 181

Dear Dan:

I have your letter of June 5, 1973, together with the eleven interrogatories which you request the Dayton Bar Association to answer in writing and under oath within 28 days of the date of service.

In your letter of May 21, addressed to Fred Izenson and me, you requested a complete breakdown of the charges against you as they pertained to each specific allegation. In my reply to you of May 30, 1973, I pointed out that we did not believe we should furnish this information to you for the reason set forth in the letter.

For the same reasons set forth in my letter of May 30, 1973, we do not intend to answer the interrogatories without a specific ruling from the Board of Commissioners on Grievances and Discipline.

Very truly yours,

Richard G. Snell

RGS/pls
cc: Fred M. Izenson
Judge William Radcliff

APPENDIX H

BEFORE THE BOARD OF COMMISSIONERS ON GRIEVANCES
AND DISCIPLINE
OF
THE SUPREME COURT OF OHIO

In re:

Complaint against

Dan D. Weiner
Name of Attorney

Suite 301, 25 South Main Bldg.

Dayton, Ohio 45402
Address

RESPONDENT

No. 181

COMPLAINT
AND
CERTIFICATE

Rule XVIII of Supreme Court of Ohio

Dayton Bar Association
Name of Bar Association

Suite 601, 3 South Main Street

Dayton, Ohio 45402
Address

RELATOR

Now comes the Relator and alleges that **Dan D. Weiner** *an Attorney at Law, duly admitted to the practice of law in this State of Ohio is guilty of the following misconduct:*

1. Willful breach of Canon 1, Ethical Consideration 1-5 in that Respondent is guilty of intemperate and undignified conduct in evidencing disrespect for the legal system and for duly acting and qualified judges in the performance of their duties.

2. Willful breach of Canon 1, Disciplinary Rule 1-102 Misconduct (A) (5) in that Respondent's disrespect for judges as aforesaid and for the legal system as aforesaid and for the legal system as aforesaid constituted conduct that is prejudicial to the administration of justice.

3. Willful breach of Canon 2, Disciplinary Rule 2-106 Fees for Legal Services (A) in that Respondent entered into agreements for and charged and collected clearly excessive fees for legal services rendered.

4. Willful breach of Canon 2, Disciplinary Rule 2-110, Withdrawal From Employment (A) (2) in that Respondent withdrew from employment without taking reasonable steps to avoid foreseeable prejudice to the rights of his client.

5. Willful breach of Canon 7, Disciplinary Rule 7-106 (C) (6) in that Respondent engaged in undignified and discourteous conduct which was degrading to a tribunal.

6. Willful breach of Canon 9, Disciplinary Rule 9-102 in that Respondent caused funds to clients to be deposited in bank accounts maintained without the State of Ohio in which were funds belonging to Respondent and in that Respondent converted to his own use trust funds belonging to his clients.

Counsel for Relator

Richard G. Snell
2260 Winters Bank Tower, Dayton, O. 45402

(Name and Address of Counsel to be Typed)

Fred M. Izenson
1900 Winters Bank Tower, Dayton, O. 45402

CERTIFICATE

The undersigned **President** *of the* **Dayton Bar Association** *hereby certifies that* **Fred M. Izenson and Richard G. Snell are** *duly authorized to represent Relator in the premises and* **have** *accepted the responsibility of prosecuting the complaint to its conclusion. After investigation, Relator believes reasonable cause exists to warrant a hearing on such complaint.*

Dated: April, 1973

President, Dayton Bar Association

(Title)

RULE XVIII

Section (8)

THE COMPLAINT, BY WHOM SIGNED. A complaint, as the term is used herein, shall mean a formal written complaint alleging misconduct or mental illness of one who shall be designated therein as the Respondent. Such complaint shall not be accepted for filing unless it is signed by one or more members of the Bar of Ohio in good standing (who shall be counsel for the Realtor) and supported by a certificate in writing signed either by the Chairman of the Committee on Legal Ethics and Professional Conduct of the Ohio State Bar Association or by the President, Secretary or Chairman of the Grievance Committee of any regularly organized local bar association in the State (which association shall be deemed the Relator), certifying that said counsel are duly authorized to represent said Relator in the premises and have accepted the responsibility of prosecuting the complaint to conclusion. Such certification shall constitute a representation that, after investigation, the Relator believes reasonable cause exists to warrant a hearing on such complaint. The complaint may also, but need not, be signed by the person aggrieved.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 74-920

DAN D. WEINER,
Petitioner,

v.

DAYTON BAR ASSOCIATION,
Respondent.

REPLY BRIEF FOR PETITIONER

I

The respondent admits in their answer (Page 2) that they deliberately refused to answer the interrogatories filed by the petitioner because there were no Ohio procedural rules requiring them to do so. The respondent further admits (Page 3) that they didn't want to limit the scope of their prosecution in any way by narrowing or delineating the charges further.

This is a clear cut admission of their deliberate violation of the standards established by the United States Supreme Court in *In re Ruffalo*, 390 U.S. 544 (1968).

The respondent states that petitioner had the right to take depositions, however the provision cited does not permit depositions for the purpose of discovery. Furthermore even if it did permit discovery depositions, without a complete and detailed breakdown of the charges as requested, taking depositions would be an impossible and worthless task.

II

Respondent also admits in their answer that petitioner, although found guilty of a violation of Canon 9-102 (B) (3), was not charged with a violation of that Canon, again a clear cut violation of the *Ruffalo* doctrine.

III

Respondent further admits that Garrett never made a complaint nor testified pertaining to a violation of excessive fees. The hearing panel clearly determined the matter was not in issue. Respondent's attorney even said it wasn't in issue.

Likewise, Garrett never made a complaint nor testified pertaining to a violation of withdrawal from employment. Respondent overlooks the fact that Garrett discharged petitioner, stating that he desired to seek another attorney, that petitioner advised him to be present at his upcoming trial with his new counsel, that petitioner so informed the prosecutor the next work day and requested the prosecutor to tell the Judge and get back to him if there were any problems. *State v. Weiner*, 37 Ohio St. 2d 11 (1974).

IV

Mrs. Ison also never filed a complaint against petitioner. Mrs. Ison was at all times aware of her contractual arrangements and promises to petitioner. She was advised immediately in writing

by petitioner when the court dismissed the matter and hired attorney Clayman to file her decree. Mrs. Ison received the divorce and petitioner was denied the balance of his earned fee.

CONCLUSION

The respondent has openly admitted the violations which in fact clearly deprived petitioner of due process of law. Petitioner again prays that a writ of certiorari be issued in this case.

Respectfully submitted

DAN D. WEINER
4848 Marshall Road
Kettering, Ohio 45429
Attorney for Petitioner